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Legal warrants, science and politics in EU food governance

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Trust Matters: Cross-Disciplinary Essays

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Why Should Citizens Trust EU Regulatory Expertise?

Legal Warrants, Science and Politics in EU Food Governance

MARTA MORVILLO

I. Trust *Through* Expertise and Trust *In* Expertise in EU Food Governance. Introduction and Outline

Public trust in experts is shaped by ideas and expectations concerning their legitimate role in a given context. Are they expected to be mere knowledge providers or one of many actors involved in more complex and value-laden science-policy issues? Depending on how one answers these questions, the institutional arrangements and legal mechanisms to foster citizens' trust in experts may vary significantly. At the same time, mismatches between normative expectations as to the legitimate role of experts and the actual practices of regulatory expert bodies may lead to tensions and ultimately result in a failure to secure citizen's trust.

The case of EU food governance is emblematic in these regards. The genesis of the current institutional architecture of EU food governance (Regulation 178/2002, the General Food Law, hereinafter GFL)¹ is rooted in the crises that affected EU food governance in the late 1990s, particularly to the BSE crisis, which simultaneously jeopardised citizens' trust and the functioning of the internal market.² The act's recitals bear testimony of how fostering public trust ranked high among the European legislator's priorities, the word 'confidence' (used interchangeably with trust in the context of the Reg)³ being reiterated multiple times. Interestingly,

¹ Regulation (EC) No 178/2002 of the European Parliament and Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and procedures in matters of food safety, [2002] OJ L31/1–24.

² S Smismans, 'Constitutionalising expertise' 187.

³ The word 'confidence' is used as a synonym of trust in the six language versions considered: *fiducia* (Italian), *confiança* (Portuguese), *confianza* (Spanish), *confiance* (French), *Vertrauen* (German), *vertrouwen* (Dutch).

the trusting subject is almost invariably understood as a consumer⁴ and trust is seen as being ensured by open, transparent, and science-based decision-making processes.⁵ When the GFL was adopted, much emphasis was indeed on sound science as one of the cornerstones of public trust in EU food governance. The scientific basis for food law, in particular, is understood as being independent, transparent, objective and of high scientific quality.⁶ In order to secure such a scientific basis, the GFL established the European Food Safety Authority (hereinafter EFSA, the Agency), an ad hoc and EU-level expert body responsible for scientific risk assessments concerning the food chain. According to Article 22(7) GFL, EFSA is to 'serve as a point of reference' for EU food governance 'by virtue of its independence, the scientific and technical quality of the opinions it issues and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it'. From an institutional point of view, EFSA is an independent agency with no direct regulatory powers;⁷ its opinions have, however, proved to be highly influential on the Commission's decisions concerning food governance.⁸

Since its inception, EFSA has placed great emphasis on the need to earn – and maintain – public trust in its scientific assessments. In almost 20 years of existence, the Agency has developed comprehensive independence and transparency policies; meaningfully, its mission statement changed in 2016 and now reads 'trusted science for safe food'. The picture is, however, not entirely that of a clear-cut success. First, while the large majority (82%) of EU citizens generally trusts scientists as sources of information on food-related issues,⁹ much fewer are aware of the institutional framework governing food risks, particularly the role (and even the existence) of EFSA (19%).¹⁰ Secondly, EU food governance has continued to be struck by repeated crises over the last two decades. Authorisations of genetically modified crops and plant protection products have triggered heated political conflicts, resulting in public contestation, deadlocked decision-making at the EU level, and extensive litigation.¹¹ Crucially, contestation has targeted both the assessment and the management of risks, equally questioning EU regulators' capacity to pursue the public interest in risk management and the very quality and

⁴ Out of six recitals in which the word 'confidence' appears, four mention consumers as the trusting subject; trading partners feature twice; stakeholders, interested parties, and the public, once.

⁵ See recs 18 and 22.

⁶ See recs 18 and 35.

⁷ In line with the non-delegation doctrine, as established in case C-9/56, *Meroni v High Authority of the European Coal and Steel Community*.

⁸ See section IV.A below.

⁹ Eurobarometer Report, *Food Safety in the EU*, April 2019, 45, www.efsa.europa.eu/sites/default/files/corporate_publications/files/Eurobarometer2019_Food-safety-in-the-EU_Full-report.pdf. EFSA commissioned the survey. It should be noted that the questions refer to scientists in general and not to EFSA specifically.

¹⁰ *Ibid.*, 55.

¹¹ For example, in the case of GMOs, see M Weimer, *Risk Regulation in the Internal Market. Lessons from Agricultural Biotechnology* (Oxford, Oxford University Press, 2019), 115ff.

independence of the scientific assessments on which it is based. The renewal of the marketing authorisation of the pesticide glyphosate has recently challenged EFSA's risk assessment methods (and that of the competent national authorities) and its independence from industry.¹² EFSA's efforts to gain EU citizens' trust have therefore not yet come to an end.

Against this background, this chapter addresses the coessential relationship between expertise and trust in EU food governance from a legal standpoint. In particular, it focuses on how the EU's commitment to securing citizens' trust in its regulatory expertise is reflected and substantiated in the legal framework governing EFSA. How does 'trusted science' look like in EU food governance? In other words, what justifications are put forward in the GFL for citizens to trust EU regulatory expertise?

The following paragraphs address these questions by complementing a conceptual approach with legal analysis: given the institutional nature of regulatory expertise, law plays a prominent role in formalising such justifications and legal analysis, therefore providing a relevant complement to conceptual approaches to public trust in expertise. The chapter advances two main claims: first, that the normative expectations shape the meaning of 'trusted science' as to the role regulatory expertise is to play in a given regulatory setting; secondly, that there should be an alignment between such normative expectations and trust-enhancing legal arrangements, as well as between expectations and practices of expert governance. It ultimately shows that EU food governance has suffered from a misalignment in both respects. Recent developments might have the potential to realign normative expectations, legal arrangements, and institutional practices based on a more iterative understanding of the role of regulatory experts in risk regulation.

Section II articulates a theoretical framework for public trust in regulatory expertise, drawing on debates in Science and Technology Studies (STS), philosophy of science and democratic theory. It locates the relationship between citizens and regulatory experts within three coordinates: the nature of the authority exerted by regulatory expertise; the mechanism of delegation in place between citizens and experts; the role of law as a medium for citizens' trust in regulatory expertise. Section III considers EFSA's tasks, organisation and functioning, as set out in the GFL and analyses the trust-enhancing mechanisms embedded therein. It starts by contextualising the GFL and EFSA within the risk analysis model, based on risk assessment, management and communication. It shows that, depending on how one understands the relationship between risk assessment and risk management, ie between the respective roles of science and politics, trust in regulatory expertise rests on purely epistemic grounds, or rather on a combination of epistemic

¹² A Arcuri and YH Hendlin (eds) (2020) 'Introduction to the Symposium on the Science and Politics of Glyphosate', *European Journal of Risk Regulation*, 11(3), 411–21; M Morvillo, 'From contestation to accountability in EU pesticides regulation? The case of glyphosate' in A Arcuri, F Koman Kund (eds) *Technocracy and the Law: Accountability, Governance and Expertise*, (London/New York, Routledge, forthcoming 2021).

and political grounds. It analyses the trust-enhancing mechanisms in the GFL and shows that, although the former were largely prominent in their original formulation, both were present. Section IV juxtaposes such trust-enhancing legal arrangements and EFSA's practices. It argues that, while EFSA's legislative framework is mainly anchored in an understanding of the relationship between politics and expertise along the lines of separation, its practices have gradually blurred such dichotomy and sought to ground public trust in a more iterative understanding of the relationship between science and politics. The 2019 reform of the GFL can also be read in the context of these developments.¹³ Section V concludes.

II. 'Knowing for the Many': Regulatory Expertise, Delegation, and Trust

How to understand the relationship between citizens and regulatory experts? What role does trust play in it, and upon what conditions is it premised? Building on debates and concepts developed in STS, philosophy of science and democratic theory, the following paragraphs seek to set out three coordinates within which to inscribe the relationship between citizens and regulatory experts and the role of trust therein. They represent the theoretical backbone which will guide the analysis and assessment of the GFL in sections III and IV and relate to three key aspects of the triad (experts, citizens, trust) under consideration: the peculiarities of regulatory expertise as trustee; epistemic delegation as an act of trust; the conditions for trust in regulatory expertise.

A. Regulatory Expertise's Dual Authority

EFSA, as with independent scientific agencies generally, is an embodiment of regulatory expertise (or regulatory science).¹⁴ In the context of STS literature, regulatory expertise is defined in opposition to research science: while the latter is 'ordered around the extension of knowledge and competence without any [or with limited] regard for practical application',¹⁵ regulatory science is more practice-oriented, its purpose being the production of 'techniques, processes and artifacts that further the task of policy development'.¹⁶ Accordingly, the respective contexts in which the two operate are crucially different. Research science is carried out in a condition

¹³ Reg (EU) 2019/1381 of the European Parliament and the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain, OJ L 231, 6.9.2019, 1.

¹⁴ S. Jasanoff, *The Fifth Branch. Science Advisors as Policymakers* (Cambridge MA, Harvard University Press, 1990) 76ff.

¹⁵ B. Barnes, D. Edge, *Science in Context* (Milton Keynes, Open University Press, 1982) 147, quoted by Jasanoff, *The Fifth Branch*, 76.

¹⁶ Jasanoff, *The Fifth Branch*, 76. From the point of view of the content, the author sees regulatory science as the outcome of three different types of scientific activity: knowledge production, synthesis and prediction (77).

of relative insulation; regulatory science, on the other hand, is produced and validated in regulatory contexts which normally see the involvement of government, industry, and civil society and is, at least in principle, exposed to both scientific and non-scientific (political, judicial) accountability fora.¹⁷

Regulatory expertise's peculiar collocation, at the crossroads of science and policy, opens up different options as to what its legitimate role should be in a given regulatory context. A more classical, positivistic understanding, premised on the possibility to neatly separate facts and values, and science and politics, sees expertise as a source of uncontested knowledge, exerting epistemic authority by 'speaking truth to power'.¹⁸ Other post-positivistic accounts, premised on the value-laden nature of scientific knowledge and the impossibility of disentangling facts and values,¹⁹ see regulatory expertise as rather operating at the junction of epistemic and political authority.²⁰ According to both accounts, experts are endowed with the epistemic authority to validate knowledge claims; in addition, the latter sees regulatory experts as also exerting a form of political authority to make such knowledge claims relevant for collective decision-making.²¹ Whether one opts for one or the other account has significant consequences on regulatory expertise's relationship with citizens.

B. Epistemic Delegation as an Act of Trust

The relationship between citizens and regulatory experts has been understood as one of epistemic delegation, whereby the delegated object is epistemic power, ie 'the power of a handful of expert actors in a governing institution to *know* for the many'.²²

¹⁷ Jasanoff, *The Fifth Branch*, 78. In practice, however, regulatory expertise poses serious accountability challenges. See eg, P Weingart, S Maasen (eds) *Democratization of Expertise? Exploring Novel Forms of Scientific Advice in Political Decision-Making* (Dordrecht, Springer, 2005).

¹⁸ See above all RK Merton, 'Science and the Social Order' (1938), in idem, *The Sociology of Science. Theoretical and Empirical Investigations* (Chicago/London, The University of Chicago Press, 1973), 254.

¹⁹ See in particular the Jasanoff's co-production paradigm, S Jasanoff, *The Idiom of Co-Production*, in idem (ed), *States of Knowledge: The Co-Production of Science and Social Order* (London, Routledge, 2004) 2–3, according to which 'the ways in which we know and represent the world (both nature and society) are inseparable from the ways in which we choose to live in it. Knowledge and its material embodiments are at once products of social work and constitutive of forms of social life; society cannot function without knowledge any more than knowledge can exist without appropriate social supports'.

²⁰ H Strassheim 'Behavioural Expertise and Regulatory Power in Europe' in Weimer, De Ruijter (eds) *Regulating Risks*, 157; see also S Smismans 'Constitutionalising expertise in the EU. Anchoring knowledge in democracy', in J Priban (ed) *Self-constitution of European Society. Beyond EU politics, law and governance* (London/New York, Routledge, 2016) 186.

²¹ The political nature of regulatory expertise' authority is here understood broadly. Namely, it does not entail party politics or commitment to majoritarianism but rather a broader commitment to pursuing the public interest. Such commitment goes hand in hand with the possibility of different views as to what the public interest is also in scientific bodies, ie with the acknowledgement of the value-laden nature of regulatory science. See D Chalmers "'Food for Thought": Reconciling European Risks and Traditional Ways of Life' (2003) 66:4 *Modern Law Review*, 532, 544, in particular fn 72.

²² S Jasanoff 'Constitutions of Modernity: Science, Risk and Governable Subjects' in M Weimer, A De Ruijter (eds) *Regulating Risks in the European Union: The Co-production of Expert and Executive Power* (Hart Publishing, Oxford, 2017), 25.

If we understand trust as involving ‘a judgment, however implicit, to accept vulnerability to the potential ill will of others by granting them discretionary power over some good’,²³ epistemic delegation can itself be conceptualised as an act of trust. Both its constitutive elements – vulnerability and its acceptance – are, in fact, present in epistemic delegation. First, delegating the power to know comes with – and from – the acknowledgement of ignorance. From a trust perspective, the information asymmetries between experts and laymen constitute a form of (epistemic) vulnerability. Secondly, epistemic delegation results from a positive judgment as to the acceptance of such vulnerability. It ultimately is a choice concerning the trade-off between the risk of potential harm descending from ignorance, on the one hand, and the benefits of cooperation (or division of labour), on the other.²⁴

The existence and implications of epistemic asymmetries, and thus of a form of vulnerability, between citizens and regulatory experts is relatively uncontroversial.²⁵ The positive judgment as to their acceptance, hence as to the possibility of epistemic delegation, are, on the other hand, often implicit. Identifying the conditions for such positive judgment is crucial in order to understand the grounds on which regulatory expertise can legitimately advance claims to citizens’ trust. It is important to keep in mind that the conditions of a positive trust judgment are shaped by the nature of the delegated power. In particular, whether one sees regulatory expertise as exerting solely epistemic authority or rather as also endowed with a degree of political authority has important implications on the object – and hence on the conditions – of delegation. In the former case, the object of delegation is purely epistemic (ie the power to know); it is, therefore, submitted that a positive trust judgment would be based on the fulfilment of purely epistemic conditions. In the latter, the power to know comes with political implications, in so far as citizens delegate experts to know on their behalf and deploy such knowledge in the public interest. Therefore, it is proposed that for citizens to trust regulatory expertise in its dual capacity, they should be given both epistemic and political warrants to trust and, hence, for epistemic delegation to operate.

²³ ME Warren ‘Introduction’ in ME Warren (ed) *Democracy and Trust* (Cambridge, Cambridge University Press, 1999) 1; for a definition of trust, see also A Baier ‘Trust and antitrust’ (1986) 96 *Ethics*, 231, 235; K Powys Whyte, RP Crease ‘Trust, expertise, and the philosophy of science’ (2010) 177:3 *Synthese*, 411, 412.

²⁴ Warren, ‘Introduction’, 1.

²⁵ See eg, Powys Whyte, Crease, ‘Trust, Expertise’, 413; see also DR De Nicola, *Understanding ignorance. The surprising impact of what we don’t know* (Cambridge MA, MIT Press, 2017) 205. Epistemic vulnerability in a democratic system triggers also other sets of concerns, which, however fall beyond the scope of the present contribution: see T Christiano, ‘Rational deliberation among experts and citizens’ in J Parkinson, J Mansbridge (eds) *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge, Cambridge University Press, 2012) 27ff; C Holst, A Molander, ‘Responding to crises – democratic and epistemic worries about expertise’ in M Riddervold, J Trondal, A Newsome (eds), *The Palgrave Handbook of EU Crises*, Basingstoke/New York, Palgrave, forthcoming).

C. Trust in Regulatory Expertise as Institutional and Legally Mediated

The conditions for citizens trust in regulatory experts are characterised by a certain degree of formalisation. According to Warren's typology of trust relationships in democratic systems,²⁶ trust in experts is vertical (as opposed to horizontal) in so far as it concerns a relationship between individuals and institutions rather than between individuals.²⁷ More specifically, it is 'borrowed by institutions that select, certify and regulate performance, provide motivation for trustworthiness (eg, oversee conflict of interests and negligence)'.²⁸ The institutional (as opposed to interpersonal) nature of the warrant means that 'judgments on trust depend more upon judgments of the robustness of institutional norms than upon judgments of individuals within institutional roles'.²⁹ By 'guarantee[ing] transactions and creat[ing] the effects of trust through third party enforcement, e.g. the working of the law',³⁰ institutional norms, therefore, operate as a medium of trust.

Due to the institutional nature of the trust relationship between experts and citizens, law, and in particular, the legal norms governing the structure and functioning of regulatory scientific bodies, can therefore operate as a medium for citizens' trust in a variety of ways. First, it is law that practically frames the channels – and establishes the boundaries – through which expert knowledge participates and informs regulatory processes. Who the experts are, on what issues they ought to be consulted, whether their opinion is binding or not – all key aspects of epistemic delegation – are enshrined in legislation. From this angle, science-based legislation has been correctly depicted as 'legally-embedded-science-based-law'.³¹ Secondly, when the law designs how experts are appointed, consulted and involved in regulatory decision-making, it is not operating in a vacuum. By articulating the tasks, organisation, and functioning of regulatory scientific bodies, legal rules make explicit the normative idea – and the normative expectation – placed upon them.³² Analysing legal rules can, therefore, shed light on how the role of regulatory experts is conceived of in a given institutional context and on how such expectations as to their role are articulated into conditions for citizens to reach a positive judgment as to regulatory expertise' trustworthiness.

²⁶ ME Warren, 'What kinds of trust does a democracy need? Trust from the perspective of democratic theory' in S Zmerli, TWG Van der Meer (eds) *Handbook on Political Trust*, (Cheltenham, Edward Elgar Publishing, 2017) 34ff.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ ME Warren, 'Conclusion' in ME Warren (ed) *Democracy and Trust*, 349.

³⁰ *Ibid.*

³¹ A Arcuri, 'Glyphosate' in J Hohmann, D Joyce (eds), *International Law's Objects* (Oxford, Oxford University Press, 2018) 11.

³² Warren 'Conclusion' 350.

i. Epistemic Warrants for Regulatory Expertise

How do such conditions look? The epistemic dimension of trust in experts, including its conditions, is a relatively well-explored topic in the philosophy of science. According to Goldman, an expert in a given domain is 'someone who possesses an extensive fund of knowledge [...] and a set of skills or methods for apt and successful deployment of this knowledge to new questions in the domain.'³³ It is this combination of knowledge and skills that rationally justifies novices' (who do not possess either of the two) trust towards experts in their domain of competence.³⁴ In particular, Goldman puts forward five sources laymen might resort to in order to rationally ground their trust in experts:

- a) arguments presented by the contending experts to support their own views and critique their rivals' views;
- b) agreement from additional putative experts on one side or other of the subject in question;
- c) appraisal by 'meta-experts' of the experts' expertise (including appraisals reflected in formal credentials earned by the experts);
- d) evidence of the experts' interests and biases vis-à-vis the question at issue;
- e) evidence of the experts' past 'track records.'³⁵

In other words, the conditions for laymen to rationally trust experts entail *openness* about the arguments and disagreements (a and b), *excellence* (c and e) and *independence* (d) of the individual experts.

ii. Political Warrants for Regulatory Expertise

These conditions grounding a rational justification for laymen to trust experts have been conceived in the context of debates concerned with the epistemic dimension of the relationship between laymen and expertise. What then about possible conditions capable of accounting also for regulatory expertise's political dimension? Warren's work can once again provide useful insight on this point. In a democratic system, it is argued, citizens should be given 'some reason – a warrant – for thinking that [her] interests are convergent with the trustee's interests.'³⁶

³³ AI Goldman, 'Experts: Which ones should you trust?', (2001) 1 *Philosophy and Phenomenological Research*, 85, 92.

³⁴ Ibid, 86. See also R Foley, 'Egoism in epistemology', in F Schmitt (ed), *Socializing Epistemology. The Social Dimension of Knowledge* (Lanham MD, Rowman & Littlefield Publishers, 1994), 53; T Burge, 'Content preservation', (1993) 102:4 *Philosophical Review*, 457. See, however, J Hardwig, 'The role of trust in knowledge' (1991) 88 *Journal of Philosophy*, 693, according to whom laymen's trust in experts is necessarily blind.

³⁵ Goldman, 'Experts', 93.

³⁶ Warren, 'What kinds of trust', 40. Warren's account is much more sophisticated and premised on the idea that 'democracies ... build on good divisions of labour between participation and trust. Trust covers the many areas of collective attachment where interests converge, enabling citizens to direct their scarce participatory resources toward political arenas in which interests conflict' (Ibid, 46). Even where scientific expertise becomes politicised, ie when diverging interests emerge, trust can be ensured through institutional design (Ibid, 48).

Political warrants for citizens to trust regulatory experts should, therefore, be structured around the idea of ensuring that citizens interests are convergent with those of regulatory experts or, in other words, that regulatory experts operate in the public interest. They could, eg, aim at ensuring that a plurality of expert and lay voices are heard, normative goals (eg, high level of health protection, sustainability) are embedded in the workings of regulatory expert bodies, and the public is given quantitatively and qualitatively adequate information (eg, through high transparency and communication standards) so to understand the issues at stake and eventually hold experts accountable.

Building on these two types of warrants – pistemic and political – the next section aims to provide a trust-oriented reading of the institutional mechanisms put in place in the context of the General Food Law to ground citizens’ trust in EFSA.³⁷ On what normative idea of regulatory expertise are they premised? Do they account for both its political and epistemic dimension or solely for the latter? It is submitted that this largely depends on broader normative understandings of the relationship between science and politics in risk regulation.

III. The Features of ‘Trusted Science’ in EU Food Governance: A Trust-Based Analysis of the 2002 GFL

A. The GFL and the Risk Analysis Model

The GFL represents the framework legislation in the field of EU food governance. While complemented by other sectoral legislative acts, it sets out the ‘vision’ and the institutional structure upon which the policy area is premised. The genesis of the GFL is rooted in the food crises that occurred in the 1990s, representing an attempt to restore public trust in the EU’s ability to effectively regulate food-related risks. In particular, the GFL reacted to the allegations moved against the Commission of ‘not respecting scientific standards and being biased by the interests of Member States.’³⁸ The reform process, which intersected with the adoption of the 2001 White Paper on Governance,³⁹ culminated in the adoption of the GFL in 2002. It aimed to address the weaknesses shown by the institutional framework for food governance and restore citizen’s trust in EU institutions’ capacity to assess and manage food-related risks in the public interest. Besides developing a unitary framework for food governance, the GFL introduced two main innovations: in

³⁷The analysis focuses exclusively on the GFL, its quality of framework legislation, enshrining the objectives and principles of EU food governance, and is, therefore, non-exhaustive. Sectoral legislation further develops the framework established by GFL further, setting out other specific procedures. See eg, Reg (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, OJ L 309, 24.11.2009, 1–50.

³⁸S Smismans, ‘Constitutionalising expertise’ 187.

³⁹EC Commission, *White Paper on European Governance*, COM (2001) 428.

institutional terms, the establishment of EFSA,⁴⁰ in normative terms, in the first legislative entrenchment at the EU level of the risk analysis model (and, within its framework, the precautionary principle).⁴¹ Before considering the trust-enhancing arrangements embedded in the GFL, it is necessary to clarify the role of regulatory expertise, ie what normative expectations underpin the act.

A good starting point in this endeavour is the risk analysis model, which provides the fundamental framework within which regulatory experts' role can be inscribed. The risk analysis model essentially aims at providing guidance and structure to decision-makers engaged in processes of risk regulation. It was first put forward by the US National Research Council in 1983 in the context of chemicals regulation,⁴² and has been since then exported to other policy fields and institutional settings, including the EU. Its current formulation in the GFL comprises three distinct elements: risk assessment, risk management, and risk communication. Risk assessment represents the scientific component of risk regulation and is defined as the 'scientifically based process' consisting of identifying and characterising hazards, exposure assessment and risk characterisation.⁴³ It is 'based on the available scientific evidence and undertaken in an independent, objective, and transparent manner'.⁴⁴ Risk management, on the other hand, is risk regulation's political facet. It consists of the process of 'weighing policy alternatives in consultation with interested parties'; it is informed by risk assessment but can take into consideration 'other legitimate factors' including the precautionary principle, and, if needed, lead to the adoption of protective measures.⁴⁵ Risk communication consists of the 'interactive exchange of information and opinions throughout the risk analysis process ... including the explanation of risk assessment findings and the basis of risk management decisions'.⁴⁶ In institutional terms, risk assessment is entrusted to EFSA, while risk management falls under the remit of the Commission.⁴⁷ Risk communication permeates the whole process, and expressly foresees the participation, besides risk assessors and risk managers, of other interested parties, including consumers, businesses and the academic community.⁴⁸

The relationship between risk assessment and risk management has been – and still is – one of the most debated aspects of the risk analysis model. This comes

⁴⁰ Art 22ff GFL. All references to legislation refer to the GFL unless otherwise specified.

⁴¹ Art 6(1). The principle of risk analysis was already reflected in the Commission of the European Communities, *Communication from the Commission on the Precautionary Principle* COM(2000) 1, 18. EU Courts have also contributed to embedding the risk analysis model into EU risk regulation and the definition of the respective role of science and politics therein: see Case T-13/99 *Pfizer Animal Health SA v Council of the European Union*, 11 September 2002, para 149ff. See also Alemanno A (2008), 'The Shaping of Risk Regulation by Community Court', 18 Jean Monnet Working Paper 2008.

⁴² National Research Council, *Risk Assessment in the Federal Government: Managing the Process*, (Washington DC, National Academy Press, 1983).

⁴³ Art 1(11).

⁴⁴ Art 6(2).

⁴⁵ Art 1(12); Art 6(3).

⁴⁶ Art 1(13).

⁴⁷ Art 6(3) and 22.

⁴⁸ Art 1(13).

as no surprise, as the relationship between the two ultimately reflects ideas and understandings about the respective roles of science and politics in risk regulation. In its original formulation, the process of risk analysis was conceived of as a linear one, entailing 'a clear conceptual distinction between the assessment and the consideration of risk management alternatives,' resulting in an institutional and operational separation between assessors and managers.⁴⁹ The underlying assumption is that of the already mentioned possibility of a separation between facts and values and the purely scientific nature of risk assessment: here, regulatory experts are entrusted with a purely epistemic task. While more consolidated, this is, however, not the only reading of the risk analysis model.⁵⁰ In the US context, in particular, the linear understanding of risk analysis has been gradually replaced by more iterative approaches, which acknowledge the role of context and values in risk assessment, and hence the presence of a political dimension in the tasks entrusted to regulatory expertise.⁵¹ On what understanding of the risk analysis model, and hence the relationship between science and politics, is the GFL premised? The answer is not entirely clear-cut.

Several elements in the GFL suggest the endorsement of a linear understanding of risk analysis: first, the express characterisation of risk management as a process 'distinct from risk assessment';⁵² secondly, the establishment of EFSA itself, as an independent agency in charge of risk assessments, resonates with ideas of functional separation.⁵³ Furthermore, in carrying out its tasks, EFSA's action is oriented by 'methodological principles', which resonate with Goldmann's grounds for rational trust in expertise: excellence, openness and independence 'in the expression of its own conclusions and orientations.'⁵⁴ The GFL has indeed been deemed to represent a case of 'solidification' of the linear distinction between assessment and management into a legal framework.⁵⁵

⁴⁹ B Delogu, *Risk Analysis and Governance in EU Policy Making and Regulation. An Introductory Guide* (Dordrecht, Springer, 2016) 39.

⁵⁰ See the critique by E Fisher, 'Framing Risk Regulation: A Critical Reflection' (2013) 2 *European Journal of Risk Regulation*, 125.

⁵¹ The main steps in this evolution are represented by: National Research Council, *Science and Judgment in Risk Assessment* (Washington DC, National Academy Press, 1994); National Research Council, *Understanding Risk: Informing Decisions in a Democratic Society*, (Washington DC, National Academy Press, 1996); National Research Council, *Science and Decisions: Advancing Risk Assessment*, (Washington DC, National Academies Press, 2009).

⁵² Art 1(12).

⁵³ See Delogu, *Risk Analysis*, 40. EFSA's mission encompasses the provision of 'independent information' and 'scientific advice and scientific and technical support for the Community's legislation and policies in all fields which have a direct or indirect impact on food and feed safety' (Article 22(2)). More specifically, EFSA's tasks can be divided into three groups: provision of scientific advice (both in the form of 'the best possible scientific opinions' and of technical support) to EU institutions and the Member States; promotion of institutional cooperation and harmonisation of risk assessment methodologies, within and beyond the EU; scientific activity proper, through the collection and analysis of scientific and technical data, the commissioning of scientific studies and the characterisation of new and emerging risks.

⁵⁴ See Art 23, in particular (a), (j), (k).

⁵⁵ Fisher, 'Framing Risk Regulation', 129.

This neat distinction is, however, muddled by other elements in EFSA's legal regime. First, EFSA itself is structured into a duality of political (management board, executive director, advisory forum), and scientific bodies (scientific committee and scientific panels), so that political concerns are built into the very structure of the Agency;⁵⁶ secondly, the interconnected, as opposed to strictly separated, nature of the three components of risk analysis is also expressly acknowledged.⁵⁷ Thirdly, the objective of securing a high level of protection permeates the whole risk analysis process, including risk assessment, suggesting the latter's permeability to normative considerations;⁵⁸ conversely, several provisions stress the importance of EFSA's risk assessments, and in particular of its opinions, for risk management,⁵⁹ suggesting an even clearer permeability of risk management to scientific considerations. Article 22(7) GFL, in particular, lists among the agency's tasks that of providing 'scientific opinions which will serve as the scientific basis for the drafting and adoption of Community measures in the fields falling within its missions'. In 2003, this had been seen as conferring a strong 'normative authority' on EFSA, its opinions having the potential to 'structure individual and institutional choices on food safety within the European Union'.⁶⁰ In this sense, EFSA's authority can reach beyond the 'mere' assessment of scientific evidence and play an important role in shaping the content of the measures adopted on the basis of its opinions. This fundamental ambiguity is reflected in the trust-enhancing mechanisms embedded in EFSA's legal framework, where epistemic grounds for trust largely prevail, as recounted by section III.B, although in co-existence with a number of elements hinting at the political dimension of regulatory expertise, examined in section III.C. Against this background, section III.D considers EFSA's practices and the innovations introduced by the 2019 reform.

B. Epistemic Warrants for Trust in EFSA

Section II.C identified independence, excellence and openness as epistemic conditions for trust in regulatory expertise. Are they present, and if so, under what legal form in EFSA's legal framework, as set out in 2002? EFSA's independence is guaranteed both from an organisational and functional perspective. As to the former, appointment rules play a key role. EFSA's executive director is an emanation of the management board only;⁶¹ members of the scientific panels are 'independent scientific experts' appointed by the management board upon the proposal of the executive director, and members of the scientific committee include the

⁵⁶ According to Chalmers, 'Food for Thought', 538, the management board is EFSA's 'political guardian', while the scientific committee its 'engine room'.

⁵⁷ Art 1(10).

⁵⁸ Art 22(3).

⁵⁹ Art 6(3).

⁶⁰ Chalmers, 'Food for Thought', 540.

⁶¹ Art 26(1).

chairs of the scientific panels and additional experts appointed by the management board.⁶² Functionally, the scientific committees' members undertake to 'act independently of any external influence'⁶³ (as opposed to the executive director and members of the management board and advisory forum, who are expected to act 'independently in the public interest');⁶⁴ external influence includes that of the Commission: while its representatives may assist the activities of EFSA's scientific component, they 'shall not seek to influence decisions'.⁶⁵ All of EFSA's members must disclose any conflict of interests.⁶⁶

Excellence is explicitly ensured only as to the management board, whose members must 'secure the highest standards of competence' and a 'broad range of relevant expertise'.⁶⁷ Openness, too, features as one of the functioning principles of EFSA. From an epistemic point of view, openness it aims to ensure the scientific quality of expert advice through an open confrontation of arguments.⁶⁸ Broad publication requirements are envisaged for EFSA's scientific components, in particular with regard to scientific opinions and, importantly, to minority opinions,⁶⁹ and to possible scientific divergences with other bodies.⁷⁰ The scientific committee and the scientific panels' meetings, however, are not to be held in public (by contrast with the management board),⁷¹ but both can, when necessary, organise public hearings.⁷²

C. Political Warrants for Trust in EFSA

Political conditions for trust in regulatory expertise, as identified in section II.C include a plurality of voices heard, embedding of the relevant normative goals in the workings of regulatory-expert bodies, and transparency, here oriented at ensuring public understanding and accountability.

When examining the GFL provisions governing EFSA, it is possible to identify several rules aimed at ensuring such conditions, primarily, but not exclusively, relating to the management board and the executive director. From an organisational point of view, both the management board's composition and appointment procedure reflect its political facet. Its members, which, as mentioned above, must ensure the highest standards of competence, are appointed by a political institution (the Council) in consultation with another political institution

⁶² Art 28(3–5).

⁶³ Art 37(2).

⁶⁴ Art 37(1).

⁶⁵ Art 38(8).

⁶⁶ Art 37(1–3).

⁶⁷ Art 25(1).

⁶⁸ See section II.C above.

⁶⁹ Art 26(7).

⁷⁰ Art 30.

⁷¹ Art 38(2).

⁷² Art 28(1).

(the European Parliament) from a list drawn up by the Commission,⁷³ seeking to ensure the broadest possible geographical distribution.⁷⁴ Furthermore, four of its 14 members 'shall have their background in organisations representing consumers and other interests in the food chain.'⁷⁵ From a functional perspective, Article 42 mandates the Authority to 'develop effective contacts' with civil society representatives, including consumers, producers and other interested parties. The presence of a plurality of interests in risk assessment is, therefore, acknowledged and regulated. When it comes to scientific panels specifically, an element of plurality might be represented by the already mentioned provision concerning the disclosure of scientific divergences, highlighting the possibility of scientific disagreements and different approaches to risk assessments. Links between EFSA's risk assessment activities and the GFL normative commitments can also be identified. First, as already mentioned, the executive director and the management board and advisory committee members must 'act independently in the public interest.'⁷⁶ Secondly, and more significantly, the GFL contains provisions aimed at ensuring consistency between EFSA's yearly work programmes and the Community's legislative and policy priorities in the area of food safety⁷⁷ and establishing a communication channel between the Authority (and in particular its executive director) and the European Parliament.⁷⁸ Finally, as to transparency, understood in its public accountability dimension, several provisions aim to ensure public access to documents possessed by EFSA,⁷⁹ whether through proactive publications by EFSA itself, including the agendas and minutes of the scientific committee and the scientific panel's meetings,⁸⁰ or as a reaction to access to documents requests. Only the management board is, however, required to meet in public. Lastly, a role is to be also played by provisions on risk communication: while being drafted broadly, they provide that 'the public and any interested parties are rapidly given objective, reliable and easily accessible information, in particular with regard to the results of its work.'⁸¹

The picture outlined above presents several misalignments. At first, notwithstanding a general commitment to a strict separation between scientific and political considerations, EFSA's legal framework seems to present both political and epistemic elements to ground public trust in its regulatory expertise. At a closer look, however, it can be observed that most political arrangements relate to the management board (and to an extent to the executive director), while trust in the scientific committee and panels seems to be grounded primarily, if not

⁷³ Art 25(1).

⁷⁴ Art 25(2).

⁷⁵ Art 25(1).

⁷⁶ Art 37.

⁷⁷ Art 25(8).

⁷⁸ Art 26(1 and 2) and (h).

⁷⁹ Art 41; on access to documents, see Arts 38–39.

⁸⁰ Art 38.

⁸¹ Art 40(2).

exclusively, on epistemic grounds. Therefore, a more nuanced separation between political and epistemic considerations within EFSA seem to be incorporated. To what extent has this arrangement evolved since EFSA's inception? The following paragraph considers EFSA's practices and the recently approved reform of the GFL, suggesting that some more explicit shifts might occur in the relationship between epistemic and political grounds for trust.

IV. Evolving Understandings of 'Trusted Science' in EFSA's Practices and Reform

A. EFSA's Normative Authority in Practice

While section III highlighted some misalignments between the normative expectations the GFL places on EFSA and the legal arrangements it puts in place to secure them, the following paragraphs will briefly recount how they have been operationalised since EFSA's inception, leading to a further blurring of the lines separating EFSA's epistemic and political authority, focusing in particular on the 2019 GFL reform.

Externally, the Commission has over the years relied extensively on EFSA's scientific advice. Chalmers' prediction as to the strong normative authority exerted by EFSA's opinions has proved well-founded, to the point that EFSA's role vis-à-vis the Commission has been described as that of a passenger giving instructions to a blind driver.⁸² Several factors may have contributed to the actualisation of EFSA's normative potential. European Courts' case-law has established strict requirements for the Commission to depart from EFSA's scientific assessments. In such cases, the Commission must 'provide specific reasons for its findings by comparison with those made in the opinion', which should be 'of a scientific level at least commensurate with that of the opinion in question.'⁸³ The Commission has, therefore, a strong (judicial) incentive to follow EFSA's opinions. Furthermore, the Commission's willingness to frame its risk management measures in scientific terms has also been interpreted as a symptom of the Commission's reluctance to move from classical, 'transmission-belt' models of public administration towards more deliberative approaches.⁸⁴ Finally, EFSA itself has been found to frame its findings in prescriptive terms.⁸⁵

⁸² EIL Vos, FA Wendler (2006). 'Food Safety Regulation at the EU Level' in EIL Vos, FA Wendler (eds) *Food Safety Regulation in Europe. A Comparative Institutional Analysis* (Antwerpen-Oxford, Intersentia, 2006), 122.

⁸³ Case T-13/99, *Pfizer Animal Health SA v Council of the European Union*, para 199.

⁸⁴ M Weimer, G Pisani 'Expertise as Justification: the Contested Legitimation of the EU "Risk Administration"', in Weimer and De Ruijter, *Regulating Risks*, 191.

⁸⁵ *Ibid* 133.

Internally, EFSA seems to have developed its understanding of ‘trusted science’ both in its epistemic and political dimensions and undertaken significant efforts in order to develop a closer engagement with the public. The analysis of the press releases reporting on the management board meetings suggests a shift from an initial framing of trust mainly in terms of independence and transparency to a more comprehensive picture. In particular, it is possible to observe the development, on the side of EFSA, of more attention to participation, stakeholder involvement, and public engagement. The first approach can be traced back to statements which link public trust in EFSA to its being independent (‘Through EFSA’s strengthened rules on Declarations of Interests, the Authority will continue to build a system which helps reinforce trust in its high quality scientific work’)⁸⁶ and to the transparency of its work (‘increase trust by continuing to ensure independence and enhance transparency and openness of its scientific work’).⁸⁷ A more nuanced picture has emerged in particular with EFSA’s 2020 Strategy.⁸⁸ Without abandoning independence and transparency as key conditions, EFSA’s 2020 Strategy sees trust as a result of societal engagement in risk assessment.⁸⁹ It, therefore, stresses the need to ‘prioritise public and stakeholder engagement in the process of scientific assessment’, through which ‘EFSA aims to enable society to contribute more widely to its risk assessment work and thereby to increase trust.’⁹⁰ Trust is therefore increasingly linked to both epistemic and political grounds, in particular the possibility for the public to have its voice heard, also in the Agency’s scientific activities.

B. The GFL Reform: Addressing Misalignments?

The GFL has been reformed in April 2019, responding to both the Regulatory Fitness evaluation carried out by the Commission on the GFL and the ‘glyphosate crisis’, which challenged the transparency and independence of the EU’s agency science. From the point of view of the content, the GFL reform explicitly aims to enhance the transparency and sustainability of risk assessment,⁹¹ but in fact, it

⁸⁶ www.efsa.europa.eu/en/events/event/52nd-management-board-meeting-efsa-management-board.

⁸⁷ www.efsa.europa.eu/en/events/event/55th-management-board-meeting-efsa-management-board; see also www.efsa.europa.eu/en/events/event/56th-management-board-meeting-efsa-management-board and www.efsa.europa.eu/en/events/event/59th-management-board-meeting-efsa-board-adopts-work.

⁸⁸ EFSA’s public engagement efforts do, however, have a longer history, see eg, the establishment, in 2005, of its Consultative Stakeholder Platform.

⁸⁹ In the same vein, see also Bernhard Url’s, EFSA’s executive director, statement: ‘Science gains its robustness from being embedded in society, which we aim to achieve at EFSA through our openness and transparency approach. We have to move from truth to trust.’ (www.efsa.europa.eu/en/press/news/151014).

⁹⁰ www.efsa.europa.eu/en/events/event/68th-management-board-meeting-board-adopts-efsa-strategy. See also EFSA’s 2020 strategy, www.efsa.europa.eu/sites/default/files/corporate_publications/files/strategy2020.pdf.

⁹¹ For a more comprehensive appraisal of Reg 1381/2019, in the light of the authorisation of glyphosate, see M Morvillo, ‘Glyphosate effect: has the glyphosate controversy affected the EU’s regulatory epistemology?’ (2020) 11:3 *European Journal of Risk Regulation*, 422.

addresses most of the trust-enhancing arrangements and mechanisms originally envisaged by the GFL. In particular, the GFL reform resonates with the internal and external developments mentioned above, in the sense of, at least partially, reconsidering the balance and the distribution between political and epistemic grounds for trust.

Trust featured as a prominent concern in the GFL reform, however, in a partly different declination than in its 2002 version. When comparing the trust-related recitals of the 2019 Regulation to those of the 'old' GFL (see section I above), it can be observed how the range of considerations informing the legislator's view of trust – initially conceived in a market-oriented fashion ('the consumer') – has broadened. More emphasis is now placed on the societal dimension of food governance by reference to the 'general public' as the trusting subject. A similar widening of the legislator's understanding of trust concerns its grounds: while transparency and independence remain central, they are now no longer exclusively linked to the quality and the objectivity of EFSA's work, but also the accountability of risk assessment 'to the Union citizens in a democratic system';⁹² risk communication, and therefore, the public's possibility to understand the science underpinning food regulation, is also given more prominence.⁹³ Read in these terms, the reform could be seen as a sign of a shift from an economic to a democratic view of trust in EU food governance.

While the reform has reinforced both epistemic and political grounds for trust, the latter seems to be its main focus. New epistemic warrants include the establishment of a register of the studies commissioned by private applicants,⁹⁴ so to ensure that no unfavourable data is withheld by the applicant and enhance risk assessments' independence, and the establishment of requirements of scientific excellence and independence also for the members of the scientific panels.⁹⁵ Political warrants, on the other hand, target risk assessments' inclusiveness and transparency. As to the former, EFSA's management board's composition has been revised to include the Member States representatives (in line with the joint approach to agencies' governance)⁹⁶ and give more structure to interested parties' representation.⁹⁷ Inclusiveness also concerns the Agency's strictly scientific component. The members of EFSA's scientific panels will now be appointed based on the Member States proposals to ensure, besides excellence and independence, also geographical balance;⁹⁸ additional public consultations are envisaged,⁹⁹

⁹² Rec 12.

⁹³ Rec 3.

⁹⁴ Art 1(6) Reg 1381/2019, inserting Art 32b into the GFL.

⁹⁵ Art 28(5a)(d) as amended by Reg 1381/2019.

⁹⁶ Art 1(4) Reg 1381/2019, amending Art 25 GFL. See the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, 2012, www.europa.eu/european-union/sites/europa.eu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf.

⁹⁷ Art 1(4)(b), amending Art 35 GFL.

⁹⁸ Art 28(5a)(a)–(c) as amended by Reg 1381/2019.

⁹⁹ Art 1(4) Reg 1381/2019, inserting Art 32c into the GFL.

so to broaden the evidentiary basis upon which the agency assesses authorisation dossiers. As to transparency, a new transparency regime is introduced, aimed at extending the range of information disclosed by EFSA (also) through a more careful analysis of the confidentiality claims raised by the applicants with regard to the scientific studies submitted in the context of product authorisation applications.¹⁰⁰

The innovation that deserves a more careful analysis in this context is, however, that concerning risk communication – further developed with regard to risk assessment, enhancing both the plurality of voices heard and transparency. As already noted, the original GFL provisions on communication were relatively open-ended and mainly focused on the accessibility and dissemination of the relevant information; the 2019 Regulation, by contrast, adopts a much more structured approach to risk communication, setting out its goals,¹⁰¹ principles,¹⁰² and a general implementation plan¹⁰³ to be enacted by both risk assessors (EFSA) and risk managers (the Commission). Risk communication is explicitly linked to trust in risk regulation, including both its contents and its processes:¹⁰⁴ in particular, trust can be achieved through ‘awareness and understanding of the specific issues under consideration, including cases of divergences in scientific assessments.’¹⁰⁵ In a similar vein, enhanced participation also features among risk communication’s goals, both through the involvement of and exchanging information with interested parties (consumers, business, academic community). The guiding principles of risk communication, on the other hand, include ‘transparency, openness, and responsiveness’¹⁰⁶ and establish that communication should be ‘clear and accessible, including to those not directly involved in the process or not having a scientific background.’ It is worth noting that the technical complexity of the issues at stake is not seen as representing an obstacle but rather as placing a burden on EFSA to try and bridge the epistemic asymmetry with citizens (‘the public’).

In a way, the GFL reform could be seen as an attempt to realign trust-enhancing legal arrangements and regulatory expertise’s practices. The ambiguities resulting from, on the one hand, normative ideas regarding the purely epistemic authority exerted by EFSA, and, on the other hand, the presence in the GFL of elements hinting also at a possible political dimension of its authority, have resulted in a misalignment between such normative ideas and the Agency’s practices, with EFSA exerting a form of authority that reaches beyond the purely epistemic domain. Faced with a *de facto* partial metamorphosis of the delegated object (from purely epistemic to dual), the EU legislator could have opted for further tightening the separation between risk assessment and risk management, in accordance with the normative ideas embedded in the GFL. The 2019 legislative innovations, however,

¹⁰⁰ Arts 38(c) and 39(2) as inserted by Reg 1381/2019.

¹⁰¹ Art 1(2) Reg 1381/2019, inserting Art 8a into the GFL.

¹⁰² *Ibid*, inserting Art 8b into the GFL.

¹⁰³ *Ibid*, inserting Art 8c into the GFL.

¹⁰⁴ *Ibid*, inserting Art 8a(e) into the GFL.

¹⁰⁵ *Ibid*, letter a).

¹⁰⁶ *Ibid*, inserting Art 8b into the GFL.

seem to take a different direction, namely that of a more iterative understanding of the relationship between the two, in particular by enhancing accountability, communication, and participation tools, ie by providing additional political grounds for trust in EFSA.

V. Concluding Remarks

The previous sections have discussed the grounds for trust in regulatory expertise, with particular regard to EFSA, the expert agency operating at the core of EU food governance. The analysis started from the assumption that reasons grounding citizens' trust in regulatory experts change depending on the normative expectation of the experts' role in a given context. It then characterised the relationship between citizens and experts in terms of delegation and argued, first, such delegation is premised on an act of trust, and second, the conditions for citizens' acceptance of their epistemic vulnerability and hence their deference to experts, are shaped by the nature of the delegated power. In particular, experts can be delegated a purely epistemic authority (ie the authority to validate knowledge claims) or rather a dual, political and epistemic one (in so far as the knowledge they validate is the basis for decision-making). Given the institutional nature of the trust relationship in place between citizens and experts, law plays a key role as a medium for trust: it expresses the normative expectations as to the experts' role and articulates the conditions to ensure public trust. Depending on such normative expectations, grounds for trust can account solely for the epistemic dimension of regulatory expertise and its political facet. Ideally, the two should align, ie there should be a correspondence between the normative expectations as to experts' role and the legal mechanisms put in place to ground public trust in them.

Against this framework, the analysis of the GFL has shown that citizens are given a multiplicity of grounds to trust EFSA, accounting for both the epistemic and, especially after the 2019 reform, the political dimension of the Agency's activities. It has, however, also shed light on a fundamental misalignment between the normative expectations the GFL places upon EFSA, the Agency's practices, and the trust-enhancing legal arrangements in place. The former is premised on a linear understanding of the relationship between science and politics, according to which the two should be strictly separated, regulatory expertise exerting a purely epistemic authority. EFSA's practices, and in particular the influence of its opinions on the adoption of risk management measures, on the other hand, have shown a metamorphosis of the delegated object, from a purely epistemic one to one which contains elements of political authority. In this context, the 2019 GFL reform has strengthened the political grounds for trust in EFSA, by providing additional avenues for participation, transparency and communication. However, it has done so without a reassessment of the paradigm according to which normative expectations are set, ie the strict approach to risk analysis, towards more iterative approaches to the interaction between science and politics. It is submitted

that such approaches might better reflect the reality of regulatory expertise in EU food governance and provide a more solid premise on which to ground public trust in EFSA. Iterative approaches to risk analysis are not entirely alien to EU risk regulation and adopted in other policy areas, namely, chemicals regulation. Here, risk assessments are entrusted to the European Chemical Agency (ECHA), which, among other arrangements, includes a Committee for Socio-Economic Analysis, in charge of assessing the impact of chemicals-related measures on the social and economic level thus incorporating non-strictly scientific concerns in risk assessments.

It is beyond doubt that the relationship between science and politics is complex and requires a fine balance between dialogue and autonomy. Such complexity reflects in the relationship between regulatory expertise and citizens. EU food governance, in particular, has long been a policy area characterised by a high degree of controversy, and it will likely remain such. A better alignment between normative expectations as to the expert's role, trust-enhancing legal arrangements, and institutional practices could perhaps contribute to grounding citizens' trust in regulatory expertise on a sounder basis.

References

- Alemanno A (2008) 'The Shaping of Risk Regulation by Community Court' 18 *Jean Monnet Working Paper*.
- Arcuri A and Coman-Kund F (eds) (2021) *Technocracy and the Law: Accountability, Governance and Expertise*, London/New York: Routledge.
- Arcuri A and Hendlin YH (eds) (2020) 'Introduction to the Symposium on the Science and Politics of Glyphosate', *European Journal of Risk Regulation*, 11(3), 411–21.
- Arcuri A, 'Glyphosate' in Hohmann J, Joyce D (eds) (2018), *International Law's Objects* (Oxford, OUP), 234–46.
- Baier A, 'Trust and antitrust' (1986) 96 *Ethics*, 231–60.
- Barnes B and Edge DO (eds) (1982), *Science in Context* (Cambridge MA, MIT Press).
- Burge T, 'Content preservation' (1993), 102:4 *Philosophical review*, 457–89.
- Chalmers D (2003), "'Food for Thought": Reconciling European Risks and Traditional Ways of Life' 66:4 *Modern Law Review*, 532–62.
- Christiano T (2012), 'Rational deliberation among experts and citizens' in J Parkinson, J Mansbridge (eds) *Deliberative systems: deliberative democracy at the large scale* (Cambridge, CUP), 27–51.
- De Nicola DR, (2017) *Understanding ignorance. The surprising impact of what we don't know* (Cambridge MA, MIT Press).
- Delogu B (2016), *Risk Analysis and Governance in EU Policy Making and Regulation. An Introductory Guide* (Dordrecht, Springer).
- Fisher E (2013), 'Framing Risk Regulation: A Critical Reflection', 2 *European Journal of Risk Regulation*, 125–32.
- Foley R (1994), 'Egoism in epistemology', in F Schmitt (ed), *Socializing epistemology. The social dimension of knowledge* (Lanham, MD, Rowman & Littlefield Publishers), 53–74.
- Goldman AI, (2001), 'Experts: which ones should you trust?', 1 *Philosophy and Phenomenological Research*, 85–110.
- Hardwig J (1991), 'The role of trust in knowledge', 88 *Journal of Philosophy*, 693–708.
- Hohmann J, Joyce D (eds) (2018), *International Law's Objects* (Oxford, OUP).

- Holst C, Molander A (2021), 'Responding to crises – democratic and epistemic worries about expertise', in Riddervold M, Trondal J, Newsome A (eds), *The Palgrave Handbook of EU Crises* (Basingstoke/New York, Palgrave), 647–65.
- Jasanoff S (1990), *The fifth branch. Science advisors as policymakers* (Cambridge MA, Harvard University Press).
- Jasanoff S (2004), 'The idiom of co-production', in Jasanoff S (ed), *States of Knowledge: The Co-Production of Science and Social Order* (London, Routledge) 1–12.
- Jasanoff S (ed) (2004), *States of Knowledge: The Co-Production of Science and Social Order* (London, Routledge).
- Jasanoff S (2017), 'Constitutions of Modernity: Science, Risk and Governable Subjects' in Weimer M, De Ruijter A (eds) *Regulating Risks in the European Union: The Co-production of Expert and Executive Power* (Oxford, Hart Publishing) 19–36.
- Merton RK (1938), 'Science and the Social Order', in Merton RK (ed) (1973), *The Sociology of Science. Theoretical and Empirical Investigations* (Chicago/London, The University of Chicago Press), 254–66.
- Morvillo M (2020), 'Glyphosate effect: has the glyphosate controversy affected the EU's regulatory epistemology?', 11:3 *European Journal of Risk Regulation*, 422–35.
- Morvillo M (2021), 'From contestation to accountability in EU pesticides regulation? The case of glyphosate' in Arcuri A, Coman-Kund F (eds) *Technocracy and the Law: Accountability, Governance and Expertise*, London/New York: Routledge, 196–222.
- Parkinson J and Mansbridge J (eds) (2012), *Deliberative systems: deliberative democracy at the large scale* (Cambridge, CUP).
- Powys Whyte K and Crease RP (2010), 'Trust, expertise, and the philosophy of science', 177:3 *Synthese*, 411–25.
- Priban J (ed) (2016) *Self-constitution of European Society. Beyond EU politics, law and governance* (London/New York, Routledge).
- Riddervold M, Trondal J, Newsome A (eds) (2021), *The Palgrave Handbook of EU Crises*, Basingstoke/New York, Palgrave).
- Schmitt F (ed) (1994), *Socializing epistemology. The social dimension of knowledge* (Lanham, MD, Rowman & Littlefield Publishers).
- Smismans S (2016), 'Constitutionalising expertise in the EU. Anchoring knowledge in democracy', in Priban J (ed) *Self-constitution of European Society. Beyond EU politics, law and governance* (London/New York, Routledge) 183–200.
- Strassheim H (2017), 'Behavioural Expertise and Regulatory Power in Europe' in Weimer M, De Ruijter A (eds) *Regulating Risks in the European Union: The Co-production of Expert and Executive Power* (Hart Publishing, Oxford), 143–64.
- Vos EIL and Wendler FA (2006), 'Food Safety Regulation at the EU Level' in Vos EIL and Wendler FA (eds) *Food Safety Regulation in Europe. A Comparative Institutional Analysis* (Antwerpen-Oxford, Intersentia), 65–138.
- Warren ME (ed) (1999), *Democracy and Trust* (Cambridge, CUP).
- Warren ME (2017), 'What kinds of trust does a democracy need? Trust from the perspective of democratic theory' in Zmerli S, Van der Meer TWG (eds) *Handbook on Political Trust* (Cheltenham, Edward Elgar Publishing), 33–52.
- Weimer M (2019), *Risk Regulation in the Internal Market. Lessons from Agricultural Biotechnology* (Oxford, OUP).
- Weimer M and De Ruijter A (eds) (2017), *Regulating Risks in the European Union: The Co-production of Expert and Executive Power* (Oxford, Hart Publishing).
- Weimer M and Pisani G (2017), 'Expertise as Justification: the Contested Legitimation of the EU "Risk Administration"', in Weimer M and De Ruijter A (eds), *Regulating Risks in the European Union: The Co-production of Expert and Executive Power* (Oxford, Hart Publishing), 167–92.
- Weingart P and Maasen S (eds) (2005), *Democratization of Expertise? Exploring Novel Forms of Scientific Advice in Political Decision-Making* (Dordrecht, Springer).
- Zmerli S and Van der Meer TWG (eds) (2017), *Handbook on Political Trust*, (Cheltenham, Edward Elgar Publishing).

EU Legislation

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ [2002] L 31/1–24.

Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain, OJ [2019] L 231/1–28.

Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, OJ [2009] L 309/1–50.

EU Case Law

Case C-9/56, *Meroni v High Authority of the European Coal and Steel Community*, 13 June 1958.

Case T-13/99 *Pfizer Animal Health SA v Council of the European Union*, 11 September 2002.

Institutional Documents

Commission of the European Communities, *European Governance a White Paper*, COM(2001) 428.

Commission of the European Communities, *Communication from the Commission on the Precautionary Principle* COM(2000) 1.

US National Research Council, *Science and Decisions: Advancing Risk Assessment*, (Washington DC, National Academies Press, 2009).

US National Research Council, *Understanding Risk: Informing Decisions in a Democratic Society*, (Washington DC, National Academy Press, 1996).

US National Research Council, *Science and Judgment in Risk Assessment* (Washington DC, National Academy Press, 1994).

US National Research Council, *Risk Assessment in the Federal Government: Managing the Process*, (Washington DC, National Academy Press, 1983).

Other

Eurobarometer, *Food safety in the EU*, Special Eurobarometer Report, April 2019, www.efsa.europa.eu/sites/default/files/corporate_publications/files/Eurobarometer2019_Food-safety-in-the-EU_Full-report.pdf.