

## **More politics, stronger consumers?**

**A new division of responsibility for food in the European Union**

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### **(1) ABSTRACT**

*In less than a decade, European food institutions have gone through a period of important reform. This reform was intended to address new challenges posed by a succession of food safety crises, the entry into the world markets of novel foods, and general public distrust of the actions of the European Commission. This paper sketches the most salient institutional changes that have occurred in the history of the European Union (EU). It also maps the redistribution of responsibilities in the European food system. After years of harmonisation in the name of free trade, in the mid-1990s food safety and consumer protection became the*

*guiding principles of European food policy. Having described these changes, the paper suggests that a specifically European food policy style is emerging in juxtaposition with 'transatlantic' food policy.*

## **(1) Introduction**

Conceived and designed to facilitate exchanges between Member States, the European Community (which became European Union in 1992) has always sought to establish a wide market in which products – amongst them food products – would circulate. The agri-food sector is of major significance in the European economy. The EU is second only to the United States as a global exporter of agricultural products. The European food market is one of the largest in the world.<sup>1</sup> This means that food issues are very prominent in the development of European integration.

European food regulation emerged as a web of rules and institutions aimed at preventing internal trade barriers and ensuring that certain standards of food quality were uniform across the internal market. Yet food products are not anonymous goods, but are an integral part of people's identities and are embedded in national cultures. This has been demonstrated in various trade disputes among Member States, and their attempts to introduce protectionist measures in order to shelter the internal market from external competition, as well as in transatlantic disputes with other WTO (World Trade Organization) countries.

Until the 1980s, EU food law was developed in a piecemeal fashion. The result was an inconsistent and fragmented framework of food regulation, and control mechanisms characterised by the different national traditions of Member States, which retained much of the competence for food legislation in general and food control in particular (O'Rourke, 2001).

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<sup>1</sup> The European food industry is the leading industrial sector in Europe. It is worth €600 billion, is the third-largest employer, with 26,000 companies, and is a major exporter, with exports totalling €45 billion (O'Rourke, 2001).

However, in the mid-1990s, a series of food scandals revealed the shortcomings of this market-oriented policy and stressed the need to focus institutional reform on the themes of food safety, public health and consumer protection. At present EU food policy focuses on key areas of the Common Agricultural Policy (CAP), on completion of the internal market, and on consumer protection, public health and environmental protection (van der Meulen & van der Velde, 2004).

This paper highlights the redefinition of the role of public and private institutions in the food sector, and of the role of consumer and environmental organisations, since the 1996 BSE (Bovine Spongiform Encephalopathy) crisis. It suggests that a new, specifically ‘European’ food policy style emerges in these years, in opposition to ‘transatlantic’ approaches to the same issues.

The paper draws on the analysis and comparison of data collected by systematic investigation of EU-related documents on food safety, quality and nutrition, in addition to interviews conducted in Brussels between October 2003 and March 2004 (see Halkier and Holm, this volume).

### **(1) 1957-1996: food regulation between harmonisation and national sovereignty**

This section outlines the major elements of food regulation in the period previous to the BSE crisis. It also shows how this regulation was linked to the development of the Single European Market.

#### *(2) Vertical harmonisation*

An important motivation to sign the Treaty of Rome (1957) was the creation of a Customs Union which would cover all trade in goods. The establishment of a free trade market involved the systematic abolition of customs duties on imports and exports between Member States. Through common policies and activities the Treaty was aiming, among other things, to promote harmonious, balanced economic development, as well as convergence in economic performance.

Despite the dismantling of customs borders, however, goods (including food products) travelling from one Member State to another continued to move from one legal system to another; this meant different rules applied to the same aspect of a product in different

jurisdictions (van der Meulen & van der Velde, 2004: 128). The systematic elimination of national customs further required an “approximation of the laws of Member States to the extent required for the functioning of the common market” (EC Treaty, Art.3).

One of the first significant initiatives designed to foster harmonisation was the *Programme for the Elimination of Technical Obstacles to Trade*, launched by the European Commission in 1969. This programme identified 43 areas of harmonisation concerning, inter alia, processed foods, including butter, pasta, ice cream, soft drinks, beer and cheese. This inaugurated a period of systematic product-by-product regulation. This approach is often referred to as ‘vertical regulation’ or industry specific, because, for each product, it imposes standards controlling the various aspects (e.g. raw materials, manufacturing processes, ingredients and labelling) of that product.

In fact the 1969 programme had a very modest impact on EU legislation. Member States were simply unwilling to abandon their national food standards in favour of a thorough harmonisation, and the programme (which in 1973 was replaced by a new *Industrial Policy Programme*) was suspended in 1976, with only a few standards having been agreed. From an economic perspective, the limits of the vertical regulation system were exposed by the Cecchini Report (1988), which presented evidence of the high costs involved for the market actors and the programme’s relative inefficiency (Ottaway, 1995). By evaluating the costs involved in having a fragmented market, the Cecchini Report was intended to offer economic justification for completing the internal market; it demanded more efficient regulation, so as to better allocate resources within the Community.

## *(2) The Principle of Mutual Recognition*

Starting from the mid-1970s a series of court cases, the most famous of which is *Cassis de Dijon* (CJ Case 120/78, 20 February 1979), proved to be a landmark in the establishment of the Single European Market. The case arose when the German authorities refused permission to import Cassis de Dijon liqueur from France because of its low alcoholic content, which made it incompatible with German legislation. The European Court of Justice ruled that food products lawfully produced or marketed in one Member State (and appropriately labelled) could not be banned from sale in the territory of another Member State, even if the standards specified in the relevant domestic regulation differed from those in the country of origin (EC, 1993). (Exceptions were allowed in cases in which the public interest, and in particular issues of public health, consumer protection and the environment, takes precedence over the free

movement of goods). This principle, known as the *Principle of Mutual Recognition*, became one of the cornerstones of EU food law, which started to take shape in the mid-1980s. It foresees “split responsibility between the Community, which should insure the application of mutual recognition and Member State legislation, and could be interpreted as an application of the principle of subsidiarity” (Swinbank, 1993: 5). Rather than applying EU standards to each product, Member States were given the freedom to set their own standards (applicable domestically), provided that they allowed products lawfully produced in other Member States to be marketed in their own territories. The task of legislation at the EU level was only to set ‘minimum standards’ to protect the public interest (Hervey & McHale, 2004: 56-57).

## (2) *Horizontal harmonisation*

The Commission adopted the logic of ‘minimum standards’ as official regulatory policy with the communication *Completion of the Internal Market: Community Legislation on Foodstuffs* (1985) and a White Paper (EC, 1985) on the same issues, which drew a distinction between “what is essential to harmonise, and what may be left to mutual recognition of national regulation and standards” (EC, 1985b: 310).

The White Paper set out a programme that is often called the ‘1992 Single Market Programme’, or ‘Internal Market Programme’. This programme linked food safety with the development and completion of the internal market through the removal of any remaining administrative, physical and regulatory barriers (Joerges & Neyer, 1997). The objective of facilitating trade by removing trade barriers created ‘spill-over’ effects and necessitated the ‘horizontal’ harmonisation of national food safety policies and inspection systems. Horizontal regulation affects specific aspects of the food chain that concern all food products or a group of them – such as, for example, packaging and additives for particular nutritional uses. With such a regulatory approach the Commission recognised that a number of common issues across all sectors needed to be pursued, and that the regulatory activity of the Commission would focus on ‘health’, ‘fair practices’ and ‘environment’ (EC, 1985). New Directives were adopted on additives, labelling, hygiene, and official controls governing food and veterinary practice (e.g. see Council Directive 397/89/EEC of 14 June 1989; Council Directive 662/89/EEC of 11 December 1989).

## (2) *Consumer protection*

An issue only vaguely mentioned during the 1980s was consumer protection (Kendall, 1996: 9). Under the pressures exerted by consumer associations (which became active in the 1970s), a consumer protection policy developed with a programme focusing on five consumer rights: protection against health and safety risks, economic justice, redress for damages, consultation, information and education. However, it was only with the Single European Act (1987) that these issues started to be recognised as matters of prime importance in the functioning of the Single European Market, and that consumer policy was incorporated into the legal framework of treaties. Although not endorsing a consumer policy, the Single European Act (Art.100A) provided the legal basis for future developments in regulation in this field.

The Treaty of Maastricht (1992) highlighted the need to bring European institutions closer to the citizen. At the time consumer policy, which is concerned with citizens' day-to-day problems and real demands, seemed an appropriate starting point of any such endeavour. In an overview of consumer politics published by the Commission in December 1992 (DN: MEMO/92/68, EU press release) consumer affairs are treated in a strictly functional way as facilitators of harmonisation and hence useful for the successful completion of the Single European Market:

The Single Market cannot be a success without the active participation of consumers and this participation is dependent on consumers having confidence that their interests will be protected as much in Community-wide market as in their national markets. The Single Market playing field is far from 'level' with so many different levels of consumer protection which distort competition.

The accent is on granting consumers a high level of protection at the same time maintaining a system of 'minimum harmonisation', so as to allow Member States to maintain, or even adopt stricter, consumer protection measures than those outlined by European Directives. In reality, on this basis, Member States tried to uphold trade barriers, which were restricted by provisions on the free movement of goods and services set out in the EC Treaty of Maastricht (van der Meulen & van der Velde, 2004).

To sum up, then, from 1956 to 1996, regulators of European food products adopted a limited range of harmonisation measures (i.e. minimum standards) and also proposed the Principle of Mutual Recognition as a means of breaking down residual trade barriers. Consumer affairs were interpreted primarily as functional to the Single European Market but became the justification for protectionist measures in some Member States. Although an interest in public

health was emerging, free trade and market harmonisation were at the core of EU food regulation.

### **(1) 1996-2000: BSE and the problem of risk governance**

Until the mid-1990s, responsibility for food safety and public health policies was dispersed across various administrative units in the Commission, including DG III (Industry), DG V (Social Affairs) and DG VI (Agriculture). Issues of risk associated with food products were mainly dealt with by way of the advisory help of scientific committees composed of independent experts, in particular the *Scientific Committee on Food*, the *Standing Committee on Food* and the *Advisory Committee on Food* (for more information on the work of these committees, see Jorge & Neyer, 1997; Vos, 2000).

In 1996 a chain of events that was highlighted in the media sparked an intense debate over the character and effectiveness of the EU food safety system. The key event was, of course, that the UK government publicly admitted the probable connection between a human brain-damaging condition called Creutzfeldt-Jakob disease (vCJD) and the consumption of beef infected with *Bovine Spongiform Encephalopathy* (BSE). This was also the year of the birth of Dolly, the first cloned mammal; and the beginning of the importation of genetically modified products to Europe – something which, together with the EU ban on beef-hormones, ignited a ferocious transatlantic trade dispute with Canada and the US.

Food issues, in their full complexity, entered the public debate, which no longer focused on the economic efficiency of EU regulation, but rather on whether it was appropriate to protect consumers, represent their interests and embody people's values and priority in policies. People started to question not only food safety, but most importantly, the competence and transparency of the public institutions in dealing with these issues. The failure of the control system, during this period, was taken to be just one instance of the malfunctioning of European food regulation (Bauer and Gaskell, 2002). The way in which politicians, public officials and scientific advisors had downplayed the risks and safety issues linked to BSE was used as evidence that public institutions cannot be trusted and are always biased towards producers, even though no evidence of dishonesty, corruption or an intention to mislead the public was proved (Phillips, 2000).

Public attention was drawn to the work of the Commission and of Member States, and heavy criticism was directed at the inadequacy of existing institutions to manage such emergencies.

In fact both the Commission and Member States reacted very promptly so as to prevent any spread of the disease on a European scale, as well as to avoid a drop in beef consumption that would affect the internal market and exports. Some years on, one can safely say that the 1996 BSE crisis was far from being an economic catastrophe. A Food and Agriculture Organization (FAO) analyst has reported: “The 1996 crisis in the UK resulted in an initial 6 percent drop in EU consumption with consumption returning to normal levels over a four year period. Global consumption, however, actually expanded in 1996 and 1997 due to growing demand in developing countries; consequently the crisis in 1996 only had a marginal impact of world beef trade and prices. Recent BSE outbreaks, however, imply a more severe consumption response, both in the EU and potentially in third countries...” (Morgan, 2001). There is wide agreement among observers that the BSE crisis was, above all, a political crisis, rather than an economic one.

A temporary Inquiry Committee was instituted by the European Parliament to investigate the crisis. Following its work, the Medina Report (1997) denounced the shortcomings and malfunctioning of the European food institutions uncovered by the BSE crisis. In particular, the report condemned the lack of an integrated approach among the various bodies involved in public health protection, and was critical of the fact that there was no central European health agency (Lafond, 2001).

In reaction to this report, the President of the Commission, Jacques Santer, in an official speech (18 February 1997), declared himself surprised at the “the lack of openness, coordination and rigour in the proceedings of the scientific committees”. He also admitted that “Commission departments were not as effective as they might have been”. He promised rapid and vast institutional and legislative reform of, among other things: the administrative structure of the Commission, the system of scientific consultation, the decision-making process, inspection controls, and the legal bases of the Community. And as announced by President Santer, Community inspections were indeed broadened to cover the whole food chain, following a ‘plough to plate’ approach. Institutional reform ensuring greater integration between food safety institutions was announced, and the need for ‘sound science’ was stressed. The work of the scientists appointed was committed to the principles of independence, transparency and excellence.

A few weeks later, the Commission announced a ‘new departure’. Giving details of the programme anticipated by President Santer (EC, 1997b), this announcement opened with a very general statement of the new direction of EU policy:

The principal objective of the new political departure is reinforcement of the protection of consumer health. For this purpose, food safety is a necessary prerequisite. Moreover, in order to restore the confidence of the consumer and answer concerns over some models of production in which productivity is over-emphasised, it is also important to protect animal and plant health and to respect animal welfare.

The BSE crisis initiated a period of institutional reform and a proliferation of new regulations in the field of food safety, but it also brought a new focus on consumer and (more generally) stakeholder participation (Westlake, 1997).

However, structural reform, the enhancement of hygiene control and new divisions of responsibility would not stop the spiral of mistrust which affected the beef market at this time and threatened to spread into other markets. Concerned about the trust deficit registered by surveys, one of the Commission's priorities became the initiation of a dialogue with all the actors involved in the food chain (Poppe & Kjarnes, 2003). This was done mainly through stakeholder consultation on various issues, and through public conferences.

A conference organised in 1998 on the theme of food security in the aftermath of the BSE crisis attracted more than 500 delegates from the parliamentary, scientific, consumer, agricultural, industrial and administrative communities. A faithful verbatim record of it was published and uploaded on the websites of the European Parliament and Commission (EP, 1998). Food safety was declared an international priority and preventive health protection, and consumer affairs were set to rise to the top of the Commission's agenda. At the conference, discussion revolved around issues of risk governance, the allocation of responsibility, research on food safety issues, and consumer policy. The limits of the food regulations already in place were discussed, and new proposals were submitted.

These materials later fed into an EU food policy programme outlined in the Commission's 2000 White Paper on Food Safety (EC, 2000), which defined general food safety principles and food safety procedures. This programmatic document revealed a clear shift of political priorities: the principal aim was now consumer protection and health, and the free market had become less important, even if the ultimate justification of food safety regulation was once more presented in terms of market efficiency. By way of remedying the low level of trust of European citizens, the White Paper announced the goals of: (i) establishing a "new Authority, which will become the scientific point of reference for the whole Union, will contribute to a high level of consumer health protection, and consequently will help to restore and maintain

consumer confidence”; and (ii) promoting a “dialogue with consumers to encourage their involvement in food safety policy” (EC, 2000: 5-12).

The first of these objectives was to be achieved through the creation of a European food agency; the second was to be achieved through the institutionalisation of participatory strategies, such as public consultation and stakeholder workshops intended to promote more inclusive and democratic decision-making processes.

Based on the principles expressed in the White Paper, the *General Food Law* (effective from 21 February 2002) established the European Food Safety Authority and laid down procedures in matters of food and feed safety (Regulation 178/2002/EC). This regulation provides, inter alia, the legal basis for a *Rapid Alert System for Food*. It also establishes a network of national authorities managed by the European Commission facilitating rapid exchange of information among the various food control institutions in Europe in cases of serious and immediate hazards to human health and safety.

### **(1) The new food agency: the focus on safety**

In searching for a model for a new food agency, Europe was in a position to benefit from several years of US experience with regulatory agencies in this field. An agency modelled on the American Food and Drug Administration (FDA) had been initially regarded as a viable solution for Europe (James et al., 1999). The core of the debate was how to deal with the three interconnected issues of risk assessment, risk management and risk communication.<sup>2</sup> In other words, the heart of the matter was the use (and possible misuse) of scientific advice by political authorities. The US model was a public health body with the capacity to manage risk as well as assess and communicate it. However, this model was eventually judged unfit for Europe by those who insisted that risk assessment and management needed to be separated, so as to protect science from potential political pressures (Interview DG SANCO). This was the official line defended by Commissioner Romano Prodi. Others, even within the Commission, regarded this separation as inadequate to deal with the deep entanglement of scientific and political issues – an entanglement which, of course, the BSE crisis had made all too apparent

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<sup>2</sup> According to definitions set out by WHO (1995), risk assessment is “the scientific evaluation of known or potential adverse health effects resulting from foodborne hazards”; risk management is “the process of weighing policy alternative to accept, minimise or reduce assessed risk and to select and implement options”; and risk communication is “an interactive process of exchange of information and opinion on risk among risk assessors, risk managers and other interested parties”.

(Yatanagas, 2001). In the White Paper (2000), the Commission explains its preference for a strict separation of tasks as follows:

Firstly, there is a serious concern that a transfer of regulatory powers to an independent Authority could lead to an unwarranted dilution of democratic accountability...

Secondly, the control function must be at the heart of the Commission's risk management process if it is to act effectively on behalf of the consumer, notably in ensuring that recommendations for action arising from control are properly followed up. The Commission must retain both regulation and control if it is to discharge the responsibilities placed upon it under the Treaties...

Thirdly, an Authority with regulatory power could not be created under the current institutional arrangements of the European Union, and would require modification of the existing provisions of the EC Treaty.

In a report published in 2001 (EC, 2001) the food authority is given these functions: scientific and technical advice to the Commission regarding foodstuffs, nutrition, animal health and welfare, plant health and genetically modified organisms; collection and analysis of data and material in these fields; monitoring of developments in food safety matters; identification of emerging risks; management of the rapid alert system; communication of the results of its activities.

The European Food Safety Authority (EFSA) was established in 2002 by a European Parliament and Council co-decision (Regulation 178/2002/EC) as an independent agency funded by the European Community. The EFSA is required to give scientific advice on questions relating either directly or indirectly to food and feed safety, animal health and plant protection, and nutrition. Provisionally based in Brussels, in the first months of its activity, the EFSA is progressively transferring to its official site in Parma, Italy. The name European Food *Safety* Agency reflects the commitment of the EU to ensuring the best control of the food chain from the 'farm to the fork', so as to offer better guarantees of consumer protection.

Food safety and institutional reform were thus at the core of European debates over the years we have been discussing. Consumer protection and public health came to be treated, not as a matter merely of facilitating market exchanges across Europe, but as politically relevant themes in themselves.

Of course, the new emphasis on safety and scientific independence in the EU agenda did not fail to attract criticism. Some observed that health-related policies such as nutrition were not given due weight (Millstone et al., 2000). Consumer organisations criticised the way the EFSA management board was composed: “they have packed the board with officials, mostly working under the direction of national governments” (Interview BEUC). These criticisms were echoed by environmental NGOs in their appraisals of the first period of activity of the EFSA (e.g. Friends of the Earth, 2004). They judged that the scientific advice offered so far had been favourable to the industry, and criticised the fact that most of the experts employed by EFSA had previously worked either for food multinationals or for national government and therefore could not accurately be called ‘independent’.

### **(1) Formal division of responsibilities for food issues starting from 1997**

The structural reorganisation that followed the BSE crisis has been widely described in documents published by the European Parliament and the Commission. It has also been analysed in numerous political science papers, from various angles and perspectives, and at different periods of the evolution of the system (Vos, 2000; Millstone, 2002; Shears et al., 2004). The most remarkable reform – conceived as a measure against possible conflicts of interest – concerned the scientific committees: all those involving consumer affairs were transferred to DG XXIV (consumer health protection), which, in 1997, was given responsibility for food safety issues. The internal market ‘product warning system’ was transferred from DGIII (internal market) to DG Enterprise and Industry; the Office for Veterinary and Phytosanitary Health Inspection (essentially food and feed control) was made independent of DGVI (agriculture) and became the Food and Veterinary Office (FVO).

A second reorganisation occurred in 1999 in which DG XXIV was renamed DG Health and Consumer Protection (DG SANCO). At the time of writing, SANCO’s three main areas of competence are Public Health (mainly based in Luxembourg), Consumer Protection (based in Brussels) and Food Safety (based in Brussels). SANCO is responsible for ensuring a high level of food safety through farm-to-table measures and effective control systems, and monitors compliance with EU standards in food safety and quality across sectors including biotech food and feed, animal health and welfare, and plant health. Nutrition issues also fall under the SANCO’s public health remit.

The task of monitoring and ensuring the implementation of international agreements, notably the WTO's Sanitary and Phytosanitary Agreement (SPSA) and Technical Barriers to Trade Agreement (TBTA), is the responsibility of DG Trade. Member States have the right to take measures to protect the health of their citizens, fauna and flora, providing these are in line with the SPSA, which applies to all measures in the areas of food safety, animal health and plant health affecting international trade. According to the SPSA, protective measures must be justified on the basis of sound scientific evidence, in proportion to the potential risk, and non-discriminatory between WTO Member States. One of the key tasks of the SPSA team in DG Trade is assisting in the development of EU legislation, so as to ensure its compatibility with WTO rules. The team operates in cooperation with DG Health and Consumer Protection (SANCO) and provides advice on the technical aspects of any cases brought forward by or against the Community in the WTO.

In an address given on European Consumer Day in March 2001, the European Commissioner for Health and Consumer Protection, David Byrne, defined food safety as an intrinsic part of food quality (Byrne, 2001). However, food quality policy has mainly concerned protected origin labels that remained under the responsibility of DG Agriculture (Scientific Committee on Designations of Origin, Geographical Indications and Certificates of Specific Character). By protecting traditional foods and products from specific regions the EU safeguards cultural identity and local production, and creates differentiation in the market (EC, 2004c). DG Agriculture is also responsible for issues concerning organic farming and agriculture, which is a sector that has grown remarkably, along with an increased awareness of food safety issues and environmental concerns. The sustainability of agriculture is explicitly addressed as a common agricultural policy. Since the EU rules on organic farming came into force in 1992, tens of thousands of farms have been converted to this system (EC, 2005).

This growing concern for environmental sustainability and its connection with human health is also visible in the work of DG Environment, which is concerned with the impact on the environment of food production (e.g. GM products being released into the environment, the use of pesticides, and so on). In June 2004 the Commission launched an *Environment and Health Action Plan* for 2004-2010 that foresees closer cooperation between the health and environment units and research areas, so as to render the assessment of the environmental impact on human health more efficient: "Europe's citizens are concerned about the potential impact of the environment on their health and expect policy makers to act. Based on these public concerns and Treaty obligations the Commission has a responsibility to better map-out

adverse environment and health connections in order to address them more efficiently” (EC, 2004b: 3).

Over the last few years food issues have also become a priority for DG Research, which, through its framework programmes, funds and monitors an impressive number of studies in various European scientific institutions. ‘Food, Nutrition and Health’ was one of the priorities in the ‘Quality of Life and Management of Living Resources Programme’ implemented under the Fifth Framework Programme (1999-2002). The Sixth Framework Programme (2002-2006) includes the theme ‘Food Quality and Safety’. Nutrition-related projects are also funded by the EU. They include the Eurodiet project (1998-2000) on nutrition and healthy lifestyles, and the European Prospective Investigation into Cancer and Nutrition (EPIC).

### **(1) The private sector and new regulation**

Like the EU and the Member States, also the food industry and the retail sector had to face the challenge of supporting consumer confidence in the safety of the food the purchase and eat through new legislation and control mechanisms on the products on the market affected deeply also the business.

In Europe, the general principle is that responsibility for food safety rests with the industry. Yet in many areas, EU legislation places precise requirements on production processes, process approval and product authorisation. The Commission has favoured self-regulation as a mechanism of achieving general safety objectives and, at the same time, leaving industry a wide flexibility in deciding the specific safety measures to take.

Under Directive 43/93/CEE food companies are already required to implement Hazard Analysis Critical Control Point (HACCP), which is a procedure both for business management and food safety control. HACCP is used to identify and evaluate hazards that affect product safety; to establish mechanisms for routine checking and control; to monitor performance; and to record the results of the control activities.

A ‘food hygiene package’, adopted by the European Commission on 14 July 2000, proposed to merge, harmonise and simplify the very detailed and complex hygiene requirements previously scattered over seventeen different Directives. In 2002, a Commission package foresaw making the application of the HACCP method compulsory for all non-primary food operators (SANCO, 2002). This meant giving primary responsibility for food safety to food producers (so-called total quality management). These measures were strongly supported by

food multinationals and the food industry in general, as they were perceived as a chance to regain consumer confidence by proving the efficiency of the operating traceability systems (Antle, 2000).

Numerous studies show that market actors developed strategic responses to stringent food safety regulation: “Public food safety regulation is becoming more performance and process based, placing greater emphasis on the responsibility of food businesses to implement effective food safety controls. In turn, food businesses are using food safety regulation strategically in a bid to gain competitive advantage” (Henson & Caswell, 1999). The use of safety and quality labels in marketing strategies is increasingly popular. They are important tools for product differentiation, for brand positioning in the market, and for building up company reputation (Fombrun & Shanley, 1996). Flynn, Marsden and Smith have observed a recent development of retailer-led food hygiene. Hazard control systems (such as HACCP) emerged “as a condition of market entry for food suppliers and manufacturers: the retailers expect more and more from their suppliers in terms of the policing of food delivery as well as the type and specifications of the food produced”. This allows retailers to gain market advantage with customers in terms of food safety and quality. Retailers promote their own quality standards according to their own “hierarchy of quality definitions” (Flynn et. al., 2003).

During the years examined in the present paper, a private-interest model of food regulation can be observed developing alongside the public regulatory and enforcement system. Retailers, for example, became more effective in controlling the quality and direction of foods along the food chain, from the producer to the consumer. Devices such as geographical indications and designations of origin, indications of price and composition and nutritional quality were introduced on packaging as a way to ensure that the consumer could make informed choices (Barjolle & Sylvander, 2000).

Additionally, the progressive privatisation of research and development associated with food gives a very prominent role to the food multinationals in, among other things, the scientific appraisal of the risk and possible benefits of food products. To give an example, in the field of biotechnologies risk regulation and product authorisation places the burden of proof on the applicant company, meaning that the applicant has to prove the substantial equivalence of the GM product to its traditional counterpart. This is thought of as a way of ensuring fair shares of the burden of regulation between the private and public spheres. The applicant company must present to a Member State’s food authority a dossier application containing all

information on the GM product proposed for release into the environment (or as food or feed). The dossier is then notified to the Commission, to other Member States and to the EFSA. A summary of it is also made available to the general public. Although the information provided can be contested by the other actors involved in the authorisation process, and the final opinion on authorisation is ultimately in the hands of the Commission and the Council of Ministers, empirical studies have shown that the applicant company is in a dominant position in the regulatory process. Indeed the distribution of information and resources is such that the industry can effectively lead the decision process (Ferretti, 2006).

### **(1) A new role for NGOs**

Of late, consumers have asked for the support of various NGOs in order to defend their interests and gain a stronger voice in the political debate. As a result, some of the key actors to emerge in the political arena in the aftermath of the BSE crisis were environmental and consumer organisations. These organisations not only assumed the role of defending the interests of consumers against the claims of the food and retail industry, but also positioned themselves as interlocutors between the public and the institutions.

Public outrage caused by the food scandals had important repercussions on the reputation and status of these organisations as defenders of important public interests (Bernauer, 2003: 68-69). On the one hand, stakeholder participation in decision-making within the EU increased, and this benefited NGOs. On the other hand, since NGOs operate by organising boycotts, demonstrations and publishing reports that can reach across directly to the general public, they gain considerable visibility and have a remarkable impact on public opinion (Bernauer, 2003).

Some observers connect the European public's strong opposition to GM products with the drop in public confidence generated by the scandals in the 1990s (Bauer & Gaskell, 2002). In a Eurobarometer survey of 2001 as many as 70% of Europeans state that they oppose GM food imports to Europe (Eurobarometer, 2002). In this context, those movements that strongly advocate a precautionary line of action for Europe and denounce the undue links between politics and industry (e.g. see Friends of the Earth, 2004) have a remarkable impact on the public. These movements themselves have contributed to the politicisation of science. They have rejected a net demarcation between facts and values and insisted that politicians take

responsibility for decision-making, even when they are relying on scientific advice (Wales & Gabe, 2002). Today environmental organisations are no longer anti-industry and anti-scientific as some authors described them in the early 1980s when protests against nuclear plants were taking place (Douglas & Wildavsky, 1982). Instead they are aware that in order to enter the public debate they need to provide data and challenge the claims of their detractors with scientific evidence. The NGOs demand that more space and publicity be given to minority expertise, transparency and openness. They insist on public involvement in the decision-making processes – processes in which they participate by opposing ‘their experts’ to government-appointed experts.

## **Conclusions**

The events of the 1990s raised new issues in EU food politics and food safety. They ensured that ‘risk’ and ‘public health’ became keywords. Most importantly, since that time a comprehensive food policy has developed, together with a new architecture of legal and institutional food safety, in which the responsibility for protecting the health and life of citizens is more evenly distributed among public institutions, businesses and NGOs.

Environmental and consumer organisations have found a position, in the dialogue between institutions and citizens, from which they can participate effectively. They operate as defenders of safety and precaution, and as opponents of novel biotechnological food products. The private food sector has sought to regain consumer trust through self-regulation, and by using safety and quality labelling. Political institutions juggle with the need to ensure market efficiency and regain citizens’ trust by involving, when possible, all stakeholders in the decision-making processes. The emphasis on precaution, and on democratic participation in particular, signals a deep difference between the new European style of regulation and other food safety regimes, especially the transatlantic model (Bernauer, 2003). In the US the public displays less anxiety about current food issues, including those raised by biotechnology (Bauer & Gaskell, 2002). The reverse is true in Europe where, in response to the food scandals, greater risk aversion, scepticism and activism has grown among consumers, and where public authorities, as well as the food industry, are forced to take up the challenges this presents.

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