

these procedures. Both concepts can be merged into the notion of “food market”, which is the complex made up of the operations of holding, offering for sale, sale, free transfer and distribution of food. The two concepts mentioned above, unified in the institution of the food market, are “interwoven” with the notion of safety, which is a guarantee of the life and health of mankind, because it is the *leit-motiv*, the minimum common denominator of the body of laws on food, the food business and the food market, that is to say, the value that the measures seek to pursue. The notion of safety, which in turn imposes risk assessment, is organised according to the precautionary principle: and inasmuch as risk management is entrusted to the public authorities, this principle represents the final concept from which the entire complex of the definitions, concepts and notions of the food law that the European Union and Member States have decided and *will decide* to adopt proceeds in a interconnected sequence.

It therefore seems that there is an ordered *corpus* of laws built around unifying principles and enacted in the pursuit of food safety. This means that these rules are applied to an independent sphere of the market, namely the food sector. If this is so, and since the legal typology of the market is given by the particular characteristics of the goods in circulation, with such characteristics determining specific access rules which thus circumscribe the subjects who operate on the market, then it can be asserted that the measures laid down in Regulation No 178/2002 are pursuant to a particular market with a highly distinctive legal profile. This allows the assertion of the specific existence of a *food market* on the level, that is to say, of the legal system.

If these considerations are accepted, it can be concluded that the specific rules of Regulation No 178/2002 may have an expansive character, whereby their interpretation involves subject matters that are adjacent by virtue of their teleological analogies, but also subject matters that were traditionally quite distinct, in which shared aims can be perceived.

## CHAPTER VI

### THE EUROPEAN FOOD SAFETY AUTHORITY: AMONG TECHNIQUE, NORMS, AND CONFLICTS\*

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SUMMARY: 1. The European Food Safety Authority in the Institutional Processes - 2. Food Safety in the Lisbon Treaty - 3. The organs of the EFSA: the advisory forum - 4. Conclusions: «There is no one centre in the universe».

#### 1. The European Food Safety Authority in the Institutional Processes

Regulation No 178/2002, providing principles and general elements of legislation on food, establishes the European Food Safety Authority and fixes procedures in the field of food safety. The aim of this regulation is to find a legal basis in the food sector fostering the protection of human health and consumers' interests, ensuring on the other side the effective functioning of the market (Benozzo 2003a).

In particular, through a composite system – domestic and European, direct and indirect (Cassese 2002) – the regulation disciplines the prevention and the risk control by evaluating the risk itself and its managing. The evaluation, technical and

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scientific only, is given to the European Food Safety Authority which, in this regard, is in charge of providing the Commission with the scientific information necessary to the risk control (Costato 2007a). In exerting this pre-eminent duty, the Authority should cooperate with agencies and national scientific committees and create a network system in order to realize an incessant information and opinion exchange on the most relevant problems dealing with food safety.

In this way, it follows that scientific and technical matters and the organization of data concerning food and feed acquire a determining relevance in light of the new regulation.

The European Authority, in particular, «represents in the meantime the indispensable joint between each of the single national authorities and the rest of the Union, and the body in charge of the almost entire risk assessment, even though in cooperation with domestic levels and the communitarian laboratory» (Valletta 2003b). Furthermore, both autonomously and after the request on the part of a Member State to the Commission, the Authority releases an opinion on the necessity to modify, suspend and revoke (by the Commission) the authorization as legally permitted.

And it is indeed this interweaving between technical functions and pre-eminent role to ask for institutional considerations.

Ordinarily, authorities come from a deficit in executing (Merusi 2000) mostly recurring in «complex» (Kreher - Martines 1996) political and administrative systems, deeply affected by the rapidity of economic processes, the polyarchy of legal sources, the intersection of interests, the disruption of traditional forms in politics.

At the communitarian level, in particular, Authorities get further reasons of their own existence from the emergence (of the rules) of market and competition as constitutional paradigms, untouchable by the domestic legislator if not in cases and within bounds provided by the communitarian law, whose power does come from a «break» of the Constitution (according to Article 11) with the following limitation of sovereignty (Kreher - Martines 1996).

Despite the denomination, Agency and/or Authority (see Adam - Tizzano 2010, for the complete list of the

communitarian specialized bodies – Agencies, Authorities, Centres, Institutes, Offices, Observatories, Foundations, Units), they are not entirely assimilable to analogous bodies already existing in domestic legal orders. «If they share with them the regulatory or executing function they exert on the ground of a high technical qualification in specific fields reserved to the Union, it cannot be said the same of their independence, given that in the European agencies are represented both Member States and – at least in those established by the EC Treaty – the European Commission» (Adam – Tizzano 2010).

The European Food Safety Authority which, by comparison with the most recurrent typologies (Merusi - Passaro 2002), can be defined neither independent (in the sense that, accordingly to the latest doctrine, the Authority respects two essential elements, that is the separation of the executive and the guarantee of a fundamental right, personal or economic liberty), nor regulatory (as the Authority embodies an evolution in the system of European Agencies because of its specific integration function, its responsibility (advisory forum), and of its dependence from the Commission – as underlined by legal scholars – Benozzo 2003a), indicates the breaking point in the balance among different protected interests just through the technical and scientific feature. But it points out also the apparent corroboration of the supranational State at the level of politics of law, with the expansion of communitarian powers – although precariously balanced with respect to logistics and organizational elements – with the constitutionalized principle of subsidiarity. Article 5(1) of TEU indeed underlines that «The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures in particular broad guidelines for these policies» (Zillier 2003; Adam – Tizzano 2010).

The current discipline on biotechnologies, in particular, confirms the dialectics. If the Directive 90/220 referred to the emission of genetically modified organisms in the environment traced «a decentralized mechanism, whose key role was attributed to the national authorities in charge with the release of the first authorization» finalized to the commodification of a genetically modified organism (Costato 2007a), with the risk of this option both creating free ports and dividing the market



through the appeal to the safeguard clause on the part of other States (Valletta 2003b). On the contrary the Regulation No 1829/2003 starts an articulated and complex procedure<sup>1</sup> in which subsidiarity and centralization are combined leaning towards authority, leaving the Authority the ultimate determination for the dissenting opinion the Commission may give with the definitive motivation. According to the aforementioned procedural norms, the request of authorization is firstly transmitted to one of the competent domestic Authorities and then to the European Authority that finally passes it to the Commission and the Member States. Within six months, the European Authority gives its own opinion on the ground of the information provided by the applicant. For particular opinions on health and environmental safety, the European Authority turns to the domestic Authorities (according to Article 18(3) c), if the request of authorization concerns genetically modified organisms such as seeds or alike, the European Authority asks a competent domestic Authority to evaluate the environmental risk or to the competent communitarian laboratory. The European Authority's opinion along with all the documentation is sent to the applicant, to Member States and to the Commission that, within three months, proposes to give the authorization or not to the Committee for the food chain and animal security, taking into account the Authority's opinion. The Commission may depart from the Authority's opinion, explaining its reasons.

Metaphorically speaking, food safety gets a two-headed connotation, since the supremacy of technique and the political technocracy in the Commission seemingly coexist, the Commission staying in the Authority the final interlocutor. As observed by a commentator: «differently from what happens in other fields of the European policies, where subsidiarity and decentralization play a paramount role, the risk control over genetically modified organisms is performed essentially by the Food Authority, even if it is obliged to consult the competent domestic authorities accordingly to the Directive 2001/18. The objective of this centrality is evident: creating a reliable and safe security system avoiding Member States dividing the

market with autonomous and uncoordinated decisions» (Valletta 2003b).

If I may take the liberty of a historical reference, I would like to notice how, in Paris back to the Colbertian period, «the competent authority in supplying food and food safety still is a more-headed monster which puts together three judicial bodies and an administrative authority», i.e.: «The Châtelet, controlling the general market; the provost of sellers; consulate jurisdiction located in the Hotel de Ville; the Parliament; moreover, the Head of the Police as the commissar appointed directly by the king and embodying the modernity of State, taking over justice» (Ferrières 2003).

If the process of multiplying bodies should simplify, concentrating functions in just one structure detached from the traditional Administration, in the European Food Safety Authority case it seems to happen quite the reverse.

The combination (horizontal/vertical, central/suburban) founding the Authority generated a complex system, and not only logistically and organizationally speaking (Chiti 2002): the double communitarian/national dimension refers to a rather complicated domestic organizational equipment, especially with respect to its functional nature, because of the noteworthy difference of the administrative apparatuses in each of the Member States.

If the protected interests are, in large part, the same (protection of health, of consumers, of agricultural produce...), the domestic structures and national Agencies for food safety (where they exist) (Trapè 2003) work following different models, tools, and functions, but pursuing the same interests. The classic case is that of the British *Food and Standard Agency*, having not only advisory competences but also inspective and regulative, including criminal indictments against the transgressors (della Cananea 2002; Babuscio 2005).

## 2. Food Safety in the Lisbon Treaty

In this regard, it is important to consider that the particular combination of the Authority, providing elements of integration and decentralization (Chiti 2002), seems to represent the real

<sup>1</sup> See Chapter XIX.



epiphenomenon of bigger European institutional dynamics, based on a moving balance among different powers, also in the field of food safety (beyond common agricultural politics) (Adornato 2010).

With the enter into force of the Treaty on the Functioning of the European Union (TFEU), differently from the agricultural matter, there is no explicit references to the issue of feeding but, on the contrary, there are specific articles (Article 168 on health safety and Article 169 on consumer protection). Despite this absence, it is doubtless that there is a direct relation among feeding, food safety, and health security; furthermore, the eighth Recital of the Regulation No 178/2002 highlights that «the Community has chosen a high level of health protection as appropriate in the development in the food law». The sixth paragraph is even more significant considering the relation among feeding, food safety and health security, especially when this article affirms that «water is ingested directly or indirectly, like other foods. Thereby contributing, to the overall explosive of a consumer to ingested substances, including chemical and microbiological constraints».

Analogous functional dimension arises from the relation between food safety and consumer's interests safety, that has to be safeguarded through the open and transparent development of food law<sup>2</sup>. According to a relevant doctrine, the aforementioned articles underline the concurrent competence (Germanò 2010) of the European Union<sup>3</sup> in both these sectors. In this regard, some scholars observed that, differently from the exclusive competences, in the case of «concurrent competences the actual erosion of Member States' competences caused by the corresponding competences exerted by the communitarian institutions is a process supposedly reversible, since the States could start again to exercise their own competences, to the

<sup>2</sup> See Recital 22 of Reg. No 178/2002.

<sup>3</sup> According to Art. 2(2), «when the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence».

extent that the Union gives up its own, modifying or repealing the common rule previously adopted» (Adam – Tizzano 2010). Particularly, Article 168(1), second line, seems to attribute original competence to Member States, since the action on the Union is devoted to completing national policies and enhancing public health including also the monitoring, the alert and the fight against heavy transnational threats; with possible evolutionary interpretation, e.g., in the Italian constitutional system, in the attempt to draw a balance between the regional competence and unity needs (Masini 2010).

Indeed, also in the field of food safety, a spread institutional juncture and of competences emerges as far as the aforementioned Article 168(4) provides – differently from Article 2(5) and Article 6, letter a), and accordingly to Article 4(2), letter k) – that the European Parliament and the European Council contribute to enhance the objectives identified by this article, deliberating in accordance with the ordinary procedure and after consulting the Economic and Social Committee and the Committee of Regions, and adopting measures in the veterinarian and phytosanitarian fields aimed at the protection of public health in order to deal with common safety issues. Such provisions are derogations to the competence attributed to the Union in order to sustain, coordinate or complete the Member States' action in certain fields and, specifically (Article 6), in the human health field; the appeal to conformity is referred to the concurrent competence.

Essentially, even in the food safety matter, there is a process similar to the one characterizing the Common Agricultural Policy, in which the exercise of competences is well spread among different levels, powers, and initiatives, inside an institutional complex framework, build on a «mobile balance» among different subjects (Adornato 2010).

As it has been authoritatively observed, «also in the European Union the relation between the centre and suburban areas, between national legal orders and supranational realities, between national and European institutions presents itself plural and not univocal and not hierarchical» (Iannarelli 2001). In this sense, specifically with regard to competences in food issues, the complexity of the institutional apparatus balanced between



the Union and Member States seems to reflect the same intricacy of the matter itself.

There is no doubt that food law has represented a significant moment in the European unification process (Costato 2009b) but, at the same time, it is inescapable «to consider that the insufficiency of the legal basis for the production of acts concerning feeding has been progressively limited with political Member States' intervention, which accepted remarkable modifications to the Treaty in light of the developing common food market» (Costato 2009b).

The European Food Safety Authority enters in this dialectics particularly through its functions and competences.

Omitting in this context further inquiries both on the meaning of «mission» and of «tasks» and on other aspects related to their intersection (Benozzo 2003a), and avoiding a mere list of them, it seems more suitable and in tune with the framework and structure of this essay to deal with some of the matters emerging from the Regulation No 178/2002.

### 3. The organs of EFSA: the advisory forum

Generally Communitarian agencies, even with different competencies and functions (Kreher – Martines 1996), present common elements, in light of their articulated structure in terms of management organs (administrative council, executive director or president), and scientific organs (scientific or technical committees).

However, the Authority, even proposing the same organizational scheme, seems to distinguish itself in some aspects, such as the presence of a third organ, the advisory forum (Trapè 2003), the Board composition, and the process to elect the executive director (Losavio 2003).

The Board is composed not, as usual, by representatives of Member States but, accordingly to the Regulation No 178/2002, by 14 members appointed by the Council with the advice of the European Parliament, based on a list drafted by the Commission. This list includes a significantly higher number of candidates and a representative of the Commission itself. Four members must have matured an experience in associations

advocating consumers' interests and other groups involved in the food chain.

It is clear that they represent «features of paramount importance, given that the organizational structures, as they are modeled on the interests they have to safeguard, are used to influence their achievement, and given that the establishment of an office and its legal qualification, the adoption of a determined organizational regimen, the identification of a specific kind of organ and the definition of its sphere of competence and so forth, are all circumstances that, in different extent, influence the exercise of the mission» (Losavio 2003).

A significant profile in this regard is due to the advisory organ, as far as its functions concern specifically the collaboration with Member States' authorities, whose discipline is identified in Article 27 of the Regulation No 178/2002, in its own way put into practice by a domestic decision<sup>4</sup>.

With respect to the multilevel institutional and composite register, defined on food safety, and especially with due consideration for the role played by the EFSA, the advisory forum represents an evident expression of this system as, among the organs of the EFSA, it is the one that «expresses more the will and, in the meantime, the necessity to cooperate and to integrate scientific knowledge both at communitarian and national level» (Trapè 2003).

Referring to another historical event, it is possible to highlight an anticipatory expression of the EFSA's functions, in the middle between the advisory forum and the scientific committee, in the last decades of XVIIIth century in Paris, but with effects both on public safety and on food safety, that showed the competition between bakers and inn-keepers.

The inn-keepers, accused by bakers of buying bread from peddlers (in this way, undermining their supremacy recognized by corporative statutes) and, aware of the legal impasse, justified this choice putting forward food safety reasons. Indeed, the bread produced by bakers would be unhealthy, as made with yeast differently from the bread provided by peddlers, made

<sup>4</sup> See Decision Concerning the Operation of the Advisory Forum of the European Food Safety Authority, 21 January 2003.



with baking powder and with the best water of the Oise river feeder.

This commercial dispute turned into a health crisis with potential effects on the environmental safety so to provoke the intervention of the head of the police, who started a first informal investigation, convening different doctors without getting an unequivocal opinion in this regard. Therefore, the head of the police asked the medical school that, by majority (45 out of 75), voted against the use of yeast.

The opinion was declared publicly but, in front of the uncontrolled spread of rumors, during the summer 1668, quite ahead in time, before legislating the judges convened the assizes of bread in January 1669 in order to listen to six doctors and six citizens, specifically convened as an «advisory forum».

As it was underlined, «the particular modernity of this conference is that it involves simple consumers at the same level of doctors and, perhaps, for the first time, a food risk was addressed democratically and, then, by judges» (Ferrières 2003).

Indeed, with the aim to put an end to this issue, the bakers' dean, Antoine Vitre, 81-year-old retired printer who was concerned about his own duty, listened to the doctors, investigated among the bakers without getting unanimous points of view, but travelled and realized that, in other countries and in other areas in France, the bread made with yeast a.k.a. *à la reine* was commonly spread, and finished his report with the irrefutable observation underlying the fact that he had spent his entire life eating that kind of bread. For this reason, the assizes of bread wisely recommended by acclamation «Leave it alone, leave it alone, the consumer will choose» (Ferrières 2003).

It is possible to point out that the process we have just described seems to anticipate the relation between the European Food Safety Authority and the civil society interlocutors, that led finally, lately during the Berlin advisory forum on 8<sup>th</sup> and 9<sup>th</sup> October 2004, to the formal proposal to establish a committee representing the interested parts<sup>5</sup>.

Nowadays, *mutatis mutandis*, the advisory forum is composed by one representative for each country acting in

domestic competent organs and carrying out in Member States functions similar to the ones developed by the EFSA. Representatives are not permitted to participate to the administrative council in each national authority; it is noteworthy then to point out that they represent Member States' scientific organs and not the Member States themselves.

Essentially, also through the composition and the operative capabilities of the advisory forum it is possible to reaffirm the multilevel dimension characterizing the Authority, coming from the dialectics between technique and politics and from the dynamics between the national and communitarian level.

Furthermore, this dimension has been predicted «in order to balance out the underrepresentation of Member States' interests inside the European Food Safety Authority, on one hand, but also to facilitate the cooperation of the EFSA with Member States and with the institutions with similar functions» (Gabbi 2009).

The advisory forum represents a turning point along the path of establishing a system between the EFSA and the Member States' Authorities (Gabbi 2009), thanks to the scientific authoritativeness and the role of coordination, and it assumes, in this perspective, a particular relevance also in light of the absence of an agency between the board of directors and Member States and, obviously, the respective domestic authorities.

Finally, from a social and political point of view, the advisory forum might allow «a stronger cohesion on particularly difficult or sensitive dossiers, in terms of a privileged and natural dialogue among the competent domestic authorities» (Rogy 2005).

#### 4. Conclusions: «There is no one centre in the universe»

If it is possible to draw a conclusion from the reasoning hereby unfolded, we may start from the first of the seven postulates of Nicholas Copernicus: «There is no one centre in the universe».

We have been living in a transitional epoch, full of uncertainties, conflicts (Martíngo 2006; Beck 1992), global

<sup>5</sup> See Recital 56 and Artt. 36 and 42 of Reg. No 178/2002.



challenges (Delmas-Marty 2004), deeply affecting people and communities in their entirety (Bauman 2007; Torresetti 2008). An age in which «State-nations lose their capacity to determine unilaterally the balance inside systems structuring the current techno-nihilist capitalism – that is, the new relationship developed among gradually more liberated individuals and more and more powerful and organized social worlds» (Magatti 2009).

«La mondialisation actuelle n'est pas la première de l'histoire, mais elle est, pour la première fois, caractérisée par des technologies qui abolissent les distances et se jouent des frontières» (Delmas-Marty 2004). Globalization, after all, is not entirely unprecedented but, as Guido Rossi (2006) pointed out, so far «the birth of a new economic condition was coupled with a new right, whereas now it happens exactly the reverse: the destruction of the pre-existing order seems to be followed by nothing».

Beside this phenomenon and in the meantime, the process of deconstruction of law, whose main source does not rest only on institutional politics, but «it is generated mainly by other social systems much more in advance in the run for globalization than politics. Economics and other social spheres – science, technology, mass media, health, education, transportation and so forth – develop in their own way toward globalization enormous normative requirements far from finding a remedy in national and transnational institutions and hence somehow self-providing the necessary answers. In sum, in the globalization era processes of legal production move from the centre of law to its suburbs, towards the boundaries dividing law and other globalized social spheres. The new world law is first and foremost peripheral, spontaneous, and social» (Teubner 2005).

A policed globalization, in which different spheres of life break their own local boundaries to constitute autonomous global areas (Giddens 1994; Teubner 2005), comes hand in hand with a «multicentered governance – that is a multilayered, multidimensional and multiactor» (Held 2005). At the same time, law in itself seems to have given up its essential function, that is the normative process, and embrace the *techné* which not only makes globalization possible, but which rules it» (Rossi

2006). In the technological era, the same politics «seems a dethroned monarch wandering among the ancient maps of the State and the society, made useless as they don't refer anymore to the real legitimization of sovereignty» (Galimberti 2006).

Essentially, law, in lack of a government and of a coordination in politics which ordinarily indicates how technology and its possible actions Galimberti (2006) should be oriented, seems to bend in front of the determinations of technique, that is to a «scientific and technological apparatus that takes the shape of a Superstate, leaving back politics, the State and their conflicts» (Severino 2010).

If, in particular, we look more into the role of science in the field of food safety, the issue comes to the surface in its full complexity. A first manifestation of it occurs yet at the infracommunitarian level, since in a 27-Member States European Union «all the technical norms need to be defined, so that the terms be unambiguous and vague; consequently, the meaning of the terms related to food produce is not implicit anymore, silently referred to science, but made explicit by the legislator itself» (Germanò 2007).

Secondly, always talking about complexity, uncertainties and divarication in scientific evaluations may occur to the extent that differences in scientific approaches may turn into market barriers and it is not by chance that the Regulation No 178/2002 provides certain remedies.

First of all, Article 30 specifies that EFSA guarantees the prompt recognition of possible differences among national opinions, or of the Commission or of the same Agency, spurring all these bodies to solve the divarications or to prepare a public report in which all the reasons of the differences be displayed (Bolognini 2003a). Furthermore, Article 60 provides a procedure of mediation in the case in which a Member State believes that a domestic measure in the field of food safety be incompatible with Regulation No 178/2002, or may affect the functioning of the internal market. In these circumstances, the two Member States involved and the Commission work in order to solve the problem. If it is not possible to reach an agreement, the Commission may ask the Authority an opinion over every controversial scientific matter (Carmignani 2003a). Later on, the question passes to the permanent Committee on the food



chain and the animal security – SCFCAH, under the comitology procedure – «process which has often been considered obscure and antidemocratic, especially when there are radical issues like the genetically modified organisms» (Finardi – Bazzana 2010).

Practically speaking, however, in recent years Commission and EFSA have been engaging in a lively dialectics, and even EFSA and Member States or national Agencies. On genetically modified organisms, in particular, the Commission seems to have diverged from the scientific opinion expressed by EFSA, as in the case of corn hybrids, in 2004, even though the decision confirmed the separation of the two. Later, in 2009, the German Federal Institute for the Risk Assessment (Bundesinstitut für Risikobewertung – BfR) and the French Agency for health security (AFSSA) on one side and the EFSA on the other opened a fierce debate regarding the speed in emitting opinions and different perspectives on scientific issues.<sup>6</sup>

On the international arena, the situation is no less complicated. Scientific debates on health and public health topics became no-tariff barriers (Moy 1999), despite the Treaties on technical barriers to trade (TBT) and the health and phytosanitary measures (SPS) (Germanò 2007). Indeed, «as several cases prove (like that of harmonized meat), the existence of a system managing trade controversies based on risk assessment and scientific evaluations (apparently objective) didn't blur the motive of trade wars» (Finardi - Bazzana 2010).

There is more than this: the same multiplication of technical committees inside the Codex Alimentarius couldn't significantly homogenize regulations for European consumers, although, more in general, it is the international scientific community to show its own criticalities.

It is enough to say that the World Health Organization is just an observer inside the committees on health and phytosanitary measures and on technical barriers to trade, and observer *ad hoc* in TRIPS (*Trade Related Intellectual Property Rights*) commitments. In this way, the WHO may pay its own contribution to the debate, but not enter the decisional process and draft resolutions. Moreover, it is worth noticing that, on a

series of issues such as additives<sup>7</sup>, microbiological risk<sup>8</sup>, pesticides<sup>9</sup>, EFSA and the scientific bodies inside the *Codex Alimentarius* have divulged different opinions and reached different results. Same happened for the evaluation of pesticides between EFSA (applying more stringent tests) and JEFCA, to the extent that, in July 2010, the European Commission asked EFSA an opinion on the different evaluation on the security of lycopene (a carotid present in tomatoes and other vegetables) (Finardi-Bazzana 2010) between the two bodies.

After all, the same data on international trade litigations confirm these considerations. The European Commission is currently involved in 81 trade controversies in front of the WTO (World Trade Organization), concerning not only food produce but with scientific evaluation as a ground for alleged breaches of free-market commitments. In particular, 31 litigations are against the U.S., among which barely 4 dealing with food issues, while the U.S. filed 19 against the EU, with 7 concerning food issues.

In sum, we may gather so far that science is affected by a post-modern scientific method, so that it wouldn't constitute anymore «an explanatory and clarifying tool of reality, culminating with the formulation of a theory or a theoretical corpus summing up the complexity of reality. Conversely, the highly sophisticated analysis contemporary science deals with (due to a plurality of data, their interpretation, the growing importance of statistics, etc.) would give birth to so many alternative hypothesis and perspectives which claim to explain the object of research»<sup>10</sup>.

In this way, we are back to the paradox of a science incapable of assuring certainties useful to society when the society itself proposes a form of politics relying on new participatory means.

Moreover, politically speaking, the same institutional structure of EFSA, with its mobile (flexible) combination between the communitarian and national level, seems a proper

<sup>7</sup> Joint Food Who Committee On Food Additives – JEFCA. See Chapter XXIV.

<sup>8</sup> Joint Food Who Meetings On Microbiological Risk Assessment – JEMRA.

<sup>9</sup> Joint Food Who Meetings On Pesticide Residues – JMPR.

<sup>10</sup> *Ibid.*, at 2 (reporting the data).

<sup>6</sup> EU Food Law Weekly, 2000, *Whatever You Do, Don't Mention*, AFSSA and BfR, No. 397.



example of a wider dialectics between socialdemocracy and liberalism, given that «legislation on food safety is a classical example of risk regulation, defined as a governmental encroachment on social or market processes in order to control potentially unhealthy consequences» (Hood - Rothstein 2001).

This is a form of dialectics supposedly confirmed, at a «constitutional» level, in the Lisbon Treaty through the balance between the general prohibition against quantitative restrictions according to Article 114 (paragraphs 4 and 5). And just in this regard we might claim that science doesn't constitute the only parameter of the agricultural and food law, since the actual diversities in evaluating the food risk seem to depend, in greater part, on pre-scientific phenomena having political motivations, «that is tied to profound values embedded in every single society and national community» (Finardi-Bazzana 2010).

Consequently, we should specify that, beyond simple scientific postulates, the controversy may have other grounds – social, ethical, economic. Hence a sort of multidisciplinary ages emerges, so that we will have more likely a knowledge controversy based on diversities about know how, traditional methods and different cultural and religious approaches than a mere scientific dispute (Rihoney 2010). So «it is no one else than the legislator that has to solve the very same scientific uncertainties picking the most suitable and timely definition in a given society» (Germanò 2007).

Let's get back, in this way, to the primary issue, that is the pluralism of legal sources as a feature of our times. «It is unthinkable to force on economic phenomena a unifying legal model, even if by law, because they are subject to intrinsic dynamics leading to overcome the suggested schemes» (Merusi 1982). In the meantime, we can't think of the role of administrative institutions without considering the social complexity, that is the transformation occurred inside the differentiated, specialized, multiplied society in so many private, collective, political entities (Pastori 1982).

These phenomena, ardently in need of an order, called for the innovating technique of codification, that is a unifying legal corpus systematizing norms dealing with some competencies and matters. Revealing, in this sense, in the Italian legal system,

the “*Environmental Code*”<sup>11</sup> (Costato - Pellizzer 2007; Germanò - Rook Basile - Bruno - Benozzo 2008), and the “*Digital Administration Code*”<sup>12</sup>.

And yet, the new «centrality of codification» has been moderated because of «the new reality of international conventions and supranational norms concerning “globalized” prototypes of contract and codes of conduct» (Rodotà 1998) which define the new normative scenario. «This implies that the legal organization rests on a multiplicity of sources that can't be rationalized through a unifying law based on a homogeneous codification» (Rodotà 1998).

In conclusion, we may affirm that «modernity is related to “soft” or flexible law – in which written sources and unwritten sources, legitimized through domestic and international practice and corroborated by conventions, alternate [...]. The communitarian law constitutes the least common denominator to manage this highly complex situation: it deals with economic aspects of individual and collective life, but it goes beyond property rights» (Alpa 2000).

The European Food Safety Authority intervenes just in this kaleidoscope of situations and in this progressive complexity but, through its «flexible» structure, enhances the overcome of past inelasticities and unbearable hierarchies, and the affirmation of a new values order and legal dimensions.

Law, just like other social phenomena, has been experiencing the inclemency of a long and difficult transition to be solved with the contribution of an «ordered pluralism» (Delmas-Marty 2004), new Atlantis of the liquid modernity (Bauman 2006).

<sup>11</sup> Leg. decree 3 April 2006, No 152.

<sup>12</sup> Leg. decree 3 December 2010, No 235.