Commentary

European Parliament Working Group on Risk: A Commentary

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Over the past 40 years or so, risk governance has become central to the EU project. Pan-EU risk governance frameworks have been critical in creating a level regulatory playing field for European business; they have provided the necessary coordination to tackle harms that cross the jurisdictional boundaries of member states; and they have brought harms under control that member state governments have neither capacity nor will in the political cycle to focus on. However, as Löfstedt points out in this issue, as the EU has extended its writ over ever more domains of risk, so have its risk decision-making processes and principles increasingly become the subject of controversy and challenge.

In that context, the European Parliament’s Informal Working Group on Risk is a welcome opportunity to improve the understanding of, and provide advice on, “risk” in EU policy processes. That is an important objective because, as Löfstedt points out, the idea of “risk” stands at the center of a number of critical questions in policy making in the EU. How far should governments go to eliminate harms that confront society? How should governments act under uncertainty? How should governments manage the distributional conflicts of policies that secure safety for some but expose others to danger?

These are, of course, universal questions to which there are no easy answers. Increasingly, however, governments around the world have started to pay more attention to risk ideas in an attempt to better understand the problems that they confront. By taking into account probability as well as the impact of potential adverse regulatory outcomes, risk-based approaches to policy making offer the promise of helping policymakers make more efficient and rational decisions. Indeed, what is at stake here is a move away from using the term “risk” simply to denote “bads” to be managed, toward the creation of a conceptual tool through which to negotiate the mandate of the state and supra-national institutions.

Yet, as Löfstedt points out, this conceptual approach is far from being accepted universally, even among the advanced democratic states of the EU, be it in the policy domains of chemicals, food, or pharmaceuticals. This is not simply a matter of pitting “good” against “bad” science; after all, if that was all that was at stake, who could possibly argue for the latter against the former? Rather, risk debates often reflect complex political, economic, and social contexts that shape the role, understanding, and communication of risk and science within policy making. If we are to better understand these debates, therefore, we need to better understand the institutional contexts within which they take place.

The European Parliament is no exception. As Löfstedt argues, as its power has grown, so has the time arrived for a dedicated group on risk that can look across policy domains, as well dig down into detail. But in clarifying, analyzing, and advising on risk debates within the European Parliament, there is a need to reflect on the particular risk contexts within which parliamentarians operate.

For example, comparative research on environmental policy making has long shown how risk governance debates across policy domains and countries are driven by conflicts over the international distribution of risks, costs, and benefits. Fear of public pillory can make it difficult for decisionmakers in any country to frame policy in risk terms that entail acceptable probabilities of deaths, financial losses, or other adverse governance outcomes. Likewise, businesses often like risk-based approaches that avoid

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burdensome rules, but might equally resist them in order to raise national regulatory barriers to competition. As Vogel has pointed out, the concentration and distribution of power between producers and consumers in international markets can go a long way to explain often surprising regulatory outcomes.\(^{(3)}\)

Even the language and ideas of risk can be deceptive. As Löfstedt suggests, simple concepts such as “hazard,” “risk,” and “danger” may be perceived and understood differently across the varied social and cultural contexts of member states, and those differences may stand in the way of gaining legitimacy and support for EU risk governance. In some countries, such as the United Kingdom and the Netherlands, for example, the idea of risk-based approaches to regulation that combine probability and impact have long been used to make tradeoffs between risk, cost, and benefit in a number of policy domains. For example, that approach has been a core idea of occupational health and safety regulation; a principle that was endorsed by a recent U.K. government review conducted by Löfstedt.\(^{(4)}\) But in the United Kingdom in recent years, that approach has been extended across much more diverse policy domains, from probation to education.\(^{(5)}\) Likewise, the Dutch have drawn heavily on U.K. work on regulatory reform to instigate their own “Risk and Responsibility” program (DRRP), in an attempt to roll out risk-based approaches more widely across policy domains.\(^{(6)}\)

Yet a quick glance at other advanced European member states suggest that risk ideas have penetrated less evenly into governance philosophies.\(^{(7)}\) In France, for example, one might expect the French “technocratic” culture to be sympathetic to risk-based approaches. Indeed, the U.S. Supreme Court judge and leading advocate of risk-based governance, Stephen Breyer, argued long ago that the French Conseil d’État, which acts as a supreme arbiter of the “general interest,” should serve as a model for combating often observed risk governance irrationalities in the United States.\(^{(8)}\) Yet in France, an implicit expectation that the state will provide “security” for its citizens and the constitutional guarantee of equality, work against the way in which risk-based approaches explicitly tolerate adverse outcomes and imply that some people may have to suffer for the collective good. One example was during the 2009 H1N1-flu pandemic, when the French Minister of Health decided to vaccinate everyone rather than the third of the population needed to provide herd immunity, having no legal grounds to decide which third should get preferential treatment.\(^{(9)}\)

In Germany, by contrast, risk-based approaches are constrained by legalistic policy cultures that find it difficult to handle risk ideas. Governance traditions that stretch back to the 19th century regarded the protection of people from “dangers” to life, freedom, and property as one of the few legitimate grounds for state action.\(^{(10)}\) But “dangers” were broadly dealt with in binary terms; if there was no danger then there were no grounds for state action. While the courts recognize that some small “residual risk” can be tolerated, they have no mechanism for reconciling historically entrenched ideas of danger and safety with the more nuanced idea of acceptable risk. For example, when the antinuclear movement challenged the authorities over the safety of nuclear power, the German courts found it impossible to agree on a definition of acceptable risk throughout the 1970s–1980s.\(^{(11)}\)

Such fundamental constraints on operationalizing what would appear to be a common technical language of risk is just one example of the challenges and dilemmas facing governance in the EU. As Löfstedt points out, there are many other challenges, such as institutional architectures of risk governance regimes that create policy silos and prevent consideration of wider risk tradeoffs, or the famously multiply defined and multiply understood precautionary principle. In sum, given the central importance of risk governance to the EU—be it the latest food scare, flu epidemic, or drug controversy—gaining clarity over what is at stake and providing leadership on possible solutions is a vital way in which the Working Group on risk could help the European Parliament make more reflective and robust decisions.

REFERENCES