

DRAFT: Please do not cite or quote!

**Stakeholder consultations in the EU governance
of GMO in the food chain**

First author:

Beatrice Bengtsson

Research Policy Institute

Lund University

PO. Box 117

SE-221 00 LUND

Sweden

e-mail: Beatrice.bengtsson@fpi.lu.se

homepage: <http://www.fpi.lu.se/en/bengtsson>

Second author:

Mikael Klintman

Research Policy Institute

Lund University

PO. Box 117

SE-221 00 LUND

Sweden

e-mail: Mikael.klintman@fpi.lu.se

homepage: <http://www.fpi.lu.se/en/klintman>

Introduction

This chapter aims to enhance the knowledge about new modes of governance and deliberation in the context of European Union (EU) food safety and Genetically Modified Organisms (GMO). The food safety area of the EU is interesting, because it suggests that deliberative rationality has influenced policy making in a multi-level context between governments, supranational institutions and other public and private actors. Yet there is a strong shadow of hierarchy in food safety and GMO governance suggesting that this are high stakes policy areas that are not delegated to networks of private-public actors in co-regulation and self-regulation arrangements. The purpose with this chapter is to trace a potential deliberative turn in the food safety domain and to explore stakeholder consultation as a new mode of governance. By drawing on the theoretical framework of input and output legitimacy, we investigate what types of stakeholder-consultative processes can be found in the food safety domain, and how they have addressed GMO specific issues. The first section provides an overview of the regulatory activities within food safety (and GMO) and discusses problems of legitimacy in the authorization procedures of GMO. The second part of the chapter focuses on how stakeholders within consultation processes participate with regard to risk assessment and risk management. Specific attention is drawn to the Advisory Group on the Food Chain and Animal Health. The analysis is based on extensive research of documents and a series of interviews with central stakeholders and policy-makers.¹

¹ The data used in this chapter corresponds to document analysis and interviews conducted between January and May 2009. The documentary sources are derived from a wide range of sources: (1) scientific books and articles, (2) SANCO/EFSA, (3) stakeholders and (4) news media. Sixteen interviews were conducted in Sweden and Brussels. The respondents correspond to six different categories: national authorities, environmental organizations, scientific experts, consumer organizations, policy-makers and federations (representing farmers, commerce, biotech and food).

The regulatory landscape of GMO governance

The regulatory framework on GMO is based on a diffusion of institutional authority, and is an example of network governance within a supranational-intergovernmental organization. Network governance is here understood as ‘regular and non-hierarchical interaction among relevant and resourceful state and societal actors in policy formulation’ (Skogstad 2003, p. 330, cf. Caduff and Bernauer 2006). The Commission has the exclusive right to propose legislation, but the European Parliament (EP) and the Council of Ministers are co-legislators on all GMO issues. The Commission thus needs an absolute majority in the EP and a qualified majority in the Council in order to pass new legislation (Skogstad 2003). While the regulatory system is based on hierarchical forms of governance, where state governments have the main authoritative influence and some power has been delegated to supranational institutions, it also exemplifies a move away from administrative rationality. DG SANCO as well as Members of the European Parliament rely on information, knowledge and feedback from non-state actors. As an example, DG SANCO consults stakeholders and gives them access to policy formulation in order for non-state actors to provide their knowledge and expertise. The purpose, according to the Commission is to ensure that proposals are ‘technically viable, practically applicable and acceptable by all the players involved’ (EC 2004).

Since 2004, there have been two different sets of rules governing the authorization of GM products in the EU: one concerning the use of GM plants (Directive 2001/18) and the other concerning food and feed made from such plants (Regulation 1829/2003). The first legislation was adopted in 2001 by co-decision between the Council and the European Parliament. The central objective of the directive was to protect the environment and human health when GMOs are released into the environment and placed on the market ‘as or in products’, in accordance with the precautionary principle (Shaffer and Pollack 2009, p. 279). Due to complaints from certain Member States, new regulations for labelling and traceability were adopted in 2003 (Regulation 1829/2003). As with the former legislation, there was a

drawn-out bargaining process among the Commission, the Council and the European Parliament. As a supplement to the protection of the environment, human life and health, the legislation from 2003 includes the rather vague criterion of ‘consumer interest in relation to genetically modified food or feed’ (Shaffer and Pollack 2009, p. 281).

The governance of GMO needs to be understood in the light of the General Food Law. According to this law, risk analysis is the basis for European food policy. In line with the general definition as determined by the WHO and Codex Alimentarius (an international programme promoting coordination of food standards and consumer protection), risk analysis consists of (1) risk assessment, (2) risk management and (3) risk communication. Risk assessment is a scientifically based process carried out by an independent scientific body: the European Food Safety Authority (EFSA). Risk management, on the other hand, is the process of weighing policy alternatives in consultation with interested parties. It takes into account the result of risk assessment, the precautionary principle and other relevant factors, and is done by policy-makers. Risk communication refers to the interactive exchange of information and opinions throughout the risk analysis process among all involved actors (Vos 2009). According to Caduff and Bernauer (2006), the establishment of EFSA has particularly strengthened the risk-assessment phase of the decision-making process. Skogstad (2006) refers to the EU regulatory framework on GMO as a consensual, meditative regulatory policy style. The framework combines the authority of scientific expertise (risk assessment) with the authority of democratic criteria, such as transparency and public accountability and other dimensions of input legitimacy. It is often stated that the European Union’s GMO legislation is the strictest in the world, and that politicians who are directly accountable (risk managers) have the final authority to approve GMO. Nevertheless, the regulatory framework has, and still is, fiercely debated and contested.

Seeking legitimacy outside the realm of stakeholder consultations

The regulatory power in the area of food safety and GMO exemplifies multilevel governance as it has become increasingly centralized at the EU level while, at the same time, the European Commission's authority has constantly been challenged from Member States and other actors (Shaffer and Pollack 2009). In the following section we focus on several problems of legitimacy in the EU governance of GMO. Why do certain actors perceive the authorization procedure as unacceptable, and what reforms have been made to enhance normative legitimacy as well as output legitimacy (policy and compliance effectiveness)? One important conclusion from this analysis is that stakeholder consultation has little or no role to play here. Instead, deliberation on high-stake issues (such as GMO authorization) has taken place in other informal and formal public spheres and between the Commission, state and non-state actors.

The first problem is the authorization procedure and what is typically referred to as the 'Deadlock in the Council'. In short, this criticism refers to an alleged dysfunction within the institutional system. For a decade, the Standing Committee on the Food Chain and Animal Health (SCFCAH) as well as the Council of Ministers have been unable to either approve or reject GMOs. Therefore, the European Commission is free to authorise them based on a special regulatory procedure²: Since neither the SCFCAH nor the Council can make a decision, proposed decisions are returned to the Commission. In that sense, the exception has become the main principle and this undermines the procedural and input legitimacy of the authorization procedure. In addition, the entire procedure is seen as biased towards EFSA, and ultimately towards industrial interest.³ A second procedural problem relates to the framework for risk analysis and the division between risk assessment and risk management.

² Both the special regulatory procedure and the role of EFSA have been the subject of criticism (see EurActiv 05/12/05 and 10/03/06).

The worries are that the opinions of EFSA create excessive spillovers to risk management, in the sense that the Commission too frequently treats the opinions of EFSA as a result of both risk assessment *and* risk management, and not just risk assessment. Certain EU Member States, NGOs and EU-parliamentarians have repeatedly criticised EFSA for a pro-GMO bias and argue that the Commission's responsibility to act as risk manager is de-politicised: The Commission simply relies on EFSA's assessments, overlooking Member States and independent scientists' expertise (cf. EurActiv.com 2006, Hiltrud Breyer 2007). The critics thus mean that the European Commission is not responsive and does not fulfil its responsibility. To a certain extent, this is also a problem of accountability. This problem emerges as Member States argue that risk managers do not fulfil their responsibilities. As a result, Member States react by imposing sanctions and national protectionism, something that will explore in the following section.

A third problem concerns disputes over the methods of risk assessment. National governments, environmental ministers and research groups have repeatedly challenged the knowledge authority of EFSA (cf. Seralini *et al* 2007; EFSA 2007). A fourth and closely related problem is Member-State 'revolt'. Several Member States have repeatedly invoked an EU safeguard clause enabling them to suspend the marketing or cultivation of GM crops within their borders even though they have EU-wide authorization. But the EU executive has never substantiated their applications and has always ordered them to lift the national bans. In that sense, institutional and compliance-related effectiveness is not just undermined but obstructed when Member States simply ignore the Commission's recommendations backed by scientific assessments from EFSA. During the Austrian (2006) and French (2008) presidencies, important steps have been taken to review the procedures for authorization and risk assessment of GMOs. In December 2008 the EU Environment Ministers adopted a conclusion on GMO (Council conclusion 2008). Separately, EFSA has initiated a review to update its guidelines on environmental risk assessments of GMO, at the request of the European Commission. However, the calls for introducing socio-economic criteria into the

GM crops registration process, and to give Member States greater freedom to establish GMO-free areas, have not been supported by the other Ministers.

One important conclusion from this analysis is that measures to improve the legitimacy of the authorization procedure of GMO have taken part outside the realm of stakeholder consultation. It has not, as the respondents point out, been a topic for stakeholder consultation (Respondent, DG SANCO, May 2009). Stakeholders have certainly exercised influence on this matter, yet through other channels than the open and transparent mode of governance that stakeholder consultation represents. The formal inclusion of actors in the policy making process regarding the authorization procedure on GMO has thus been narrow and mainly driven by state actors. Furthermore, we argue that the reforms to improve the authorization process are based on an administrative and a deliberative rationality. Firstly, the new reform proposals are based on administrative governance logic since the discussion has taken place on a high ministerial level, between bureaucratic institutions, experts and regulators. In addition, the tools applied are 'hard law' as EFSA's new guidelines for risk assessment are supposed to be regulated. The regulatory approach of the Commission to science and risk assessment has caused an outrage among scientists in the EFSA GMO-panel. Scientists are not pleased with politicians controlling the realm of science and deciding on best approaches to risk assessment (Respondent, EFSA's GMO-panel, January, 2009). Secondly, the governance logic is deliberative in the sense that the debate and criticism from civil society and environmental organizations has taken hold in the governance institutions. Through the organizational form of networks (between EU public institutions, EFSA and Member States) and stakeholder consultation (at DG SANCO and by the Barroso Commission), multiple actors have been engaged in problem-solving activities. In addition to expanded guidelines for environmental risk assessment (on long-term environmental effects of growing GM crops and the potential effects on non-target organisms), the deliberative rationale has prompted a pluralized conception of, and an interdisciplinary approach to, risk (cf. Council conclusion 2008, section seven).

So far, we have focused on deliberative interactions within core political institutions (EU Member States and EU institutions). In the following sections we turn the attention to stakeholder consultations, that is, deliberative innovations at the interface between EU institutions, NGOs and the industry.

Stakeholder consultation

Scholars conceptualize stakeholders as representatives of affected interests or as societal actors who have an interest (a stake) in a specific policy issue (cf. Renn *et al* 1993, Von Wintherfeldt 1992) and include companies, NGOs, EU Member States and individual citizens. EFSA defines stakeholders more specifically as organizations that have specific expertise, and are representative in their field of competence, permanently established at the EU level, and well known at the Community level for their activities in the area of food safety (EFSA 2007). This stricter definition of stakeholders by EFSA should not be confused with the more general discussion about public or institutional stakeholders. According to an ideal of broader stakeholder participation such a restricted definition threatens to reduce the input legitimacy of decision making within EFSA, particularly if suspicions emerge that experts from NGOs, governments and companies become an exclusive group of too intimate friends.

The research on modes of governance within the GMO field typically concerns national experiences with consensus conferences and public consultations. It focuses on the general public rather than on stakeholders and on nation-states rather than the EU (Kluver 1995, Nielsen *et al* 2007, Blok 2007, Irwing 2001, 2006). GMO is already a classic topic for public consultations on national level and GMO remains an important and publicly recognized food safety issue in the EU. These are the reasons why we expected to find several European policy processes open to the public in the research process. This is not the case. The governance of GMO at the EU level takes place within the core political institutions and constitution-making bodies. There are no examples of formalized deliberative innovations at the interface between the state and civil society that has a specific focus on GMO and the

public. Neither did we find an EU-wide consensus conference nor citizen juries or the like. Such fora have instead taken place below the EU-level, in specific Member States. It is therefore possible to say that GMO is, at the EU-level, governed *for* rather than *by* the affected (cf. Eckersley 2004, p. 112). In earlier analyses, the input legitimacy of GMO governance at the EU-level was limited to informal and ad-hoc interest representation and parliamentary representation (Borrás 2006), as well as non-formalized stakeholder dialogue with EFSA's GMO-panel (Ferretti 2008). Important initiatives have been taken more recently in the food safety domain in general and new arenas have been established that are based on formal and direct participatory mechanisms for stakeholders. Stakeholder consultation, involvement, engagement, participation and dialogue have become familiar key words in the EU food safety domain and the terminology applies to an array of activities. There are clear indications that the EU food safety domain is an experimental arena, and that DG SANCO makes its own participatory and policy-innovative reflections. These reflections are manifested in at least two comprehensive and deliberative reviews: 'The Healthy Democracy Process' (DG SANCO 2007) and the 'Future Challenges exercise' (DG SANCO). In addition, the scientific body, EFSA, also practices stakeholder dialogue in its Stakeholder Dialogue Platform. For these reasons, we argue that European policy-makers in this particular policy field demonstrate a curiosity about stakeholder-related policy innovations based on participation and deliberation.

The contribution of stakeholder consultation to risk assessment and policy processes

Oels (2007) classifies stakeholder dialogues according to three main purposes. Stakeholder dialogues for science have the aim to clarify and improve knowledge. Stakeholder dialogue for policy making which bases decision making on the deliberation of political will and, finally, stakeholder dialogue for management which aids in implementation. The following overview of stakeholder consultations in the European food safety domain uses this

classification. However, we add a fourth purpose which is stakeholder participation as development of procedures for decision making and participation. In Table 6.1, the four types of stakeholder consultation are listed along with examples from the EU food safety domain. With respect to the governance of GMO the examples that are most relevant for this chapter are EFSA's Consultative Stakeholder Platform and the Advisory Group on the Food Chain and Animal Health. Nevertheless, Table 6.1 includes all inclusive and transparent arenas for stakeholder participation in the food safety domain (EFSA 2007, DG SANCO 2009a, 2007). Since the EU Platform on Diet, Physical Activity and Health concerns health rather than food safety, we have chosen to focus our analysis on the other three examples of stakeholder consultation.

Typology of stakeholder consultation

Purpose	Example	Institutional position
Stakeholder consultation as contribution to risk assessment and/or risk communication	EFSA's Consultative Stakeholder Platform	EFSA
Stakeholder consultation as policy advice	The Advisory Group on the Food Chain and Animal Health	DG SANCO/ Food safety
Stakeholder consultation as management	EU Platform on Diet, Physical Activity and Health	DG SANCO / Health
Stakeholder consultation as development of procedures for decision making and participation	DG SANCO Stakeholder Dialogue Group	DG SANCO / General

The first type of stakeholder consultation concerns the risk assessment process. The creation of the EFSA Stakeholder Consultative Platform was agreed upon in 2005. It consists of EU-wide stakeholder organizations working in areas related to the food chain. The purpose of this platform is to meet and assist EFSA in the development of its overall relations and policy

with stakeholders. The meetings provide a 'platform for honest exchange of opinions and ideas.' Since 2005, ten meetings have taken place. No particular platform meeting has had an exclusive focus on GMO. As an alternative, EFSA choose to have a 'Technical meeting with Non Governmental Organizations on GMO' in 2006. This meeting was followed up in 2008. These two meetings have been highly criticized on both input and output legitimacy grounds. For example, Greenpeace has raised concerns about holding separate meetings with NGOs and about including too few stakeholders, and have questioned the meaning and outcome of interactions with EFSA. However, this Platform is where stakeholders come closest to the realm of science/risk assessment and it might be assumed that this science-based stakeholder dialogue is set up as a structured communicative process linking scientists with selected actors who are relevant for the research problem at hand (cf. Stoll-Kleemann and Welp 2006). The Platform does not seem to live up to this aim and is criticized for lacking in-depth discussions, having an unclear rationale and giving results that are perceived as insufficient (Bureau van Dijk Ingénieurs Conseils 2007). In addition, stakeholders are clearly ambivalent about their participation and contribution in this arena. Instead of 'up-stream involvement in risk assessment' (cf. Wynne 2008) or deliberation, stakeholders agree that this arena comes down to risk communication and monitoring. It is possible to get up-to date information; yet meetings are perceived as tedious and costly (Respondents, Brussels, May 2009). As a consequence some stakeholders that attend the meetings send a secretary or assistant instead of a policy adviser (Respondent, Brussels, May 2009). Several stakeholders see EFSA as too instrumental. These stakeholders claim that EFSA exercises 'empty proceduralism' (Chalmers 2003, p. 552). If this practice is addressed in terms of input legitimacy (as discussed in Chapter 3), the principle of inclusion seems most satisfied. Moreover, transparency has also been improved. Agendas and minutes are available online. In addition, observers are allowed to participate in the meetings. However, some actors claim that the objective of transparency may also hamper the quality of the debate (Respondent, Brussels, May, 2009). In spite of not having any visible output legitimacy, some stakeholders are

content with the established procedure and input legitimacy in terms of inclusiveness and transparency.

Stakeholder consultations can also contribute to the policy process in the development of procedures for decision making and participation (as summarized in the fourth row in table 6.1). The DG SANCO Stakeholder Dialogue Group (SDG) was created as a direct result of the DG SANCO 2006 Peer Review Group on Stakeholder involvement, in September 2007. The objective of the group is to advise the Director General and the European Commission on different process issues that will facilitate stakeholder involvement in the work of DG SANCO. The group is currently chaired by Mr Robert Madelin, Director-General of DG SANCO, and consists of nineteen members of various stakeholder groups (DG SANCO 2009b). The SDG's tasks are a more transparent comitology, improved consultation, 'engaging the un-engaged' and stakeholder asymmetry. Since this group focuses on procedures rather than on food safety topics, SDG has not had any impact on the regulations of GMO. Nevertheless, this type of consultation may have an impact on future regulations. Stakeholders have mixed opinions about this type of consultation: some refer to it as masquerade while others are excited by the deliberative quality in SDG and point out the positive feedback from SANCO. Yet compared to the other arenas of stakeholder participation, this seems to be the one where the transformation of preferences and exchange of arguments take place. An important outcome of SDG is the Comitology Planner, published yearly to allow stakeholders to anticipate consultations in the forthcoming year so that stakeholders know in advance when they will be consulted and on what particular topic. There are also more visionary plans to develop deliberative innovations at the interface between SANCO, civil society and the public. However, citizen juries, for example, are perceived by stakeholders as practically unworkable and more of a theoretical idea.

So far, we have examined the approach of policy makers to stakeholders and stakeholder consultation as a contribution to risk assessment/science (the first row in the table) and as a development of procedures (the fourth row in Table 6.1). Two important

conclusions can be made so far. Firstly, there are clear indications that policy makers in the food safety domain are interested in stakeholder consultation. Various forms of stakeholder consultation have indeed been implemented as a complement to network governance and hard law (cf. the earlier sections in this chapter). Secondly, there are great differences between EFSA's Consultative Stakeholder Platform and DG SANCO's Stakeholder Dialogue Group. The deliberative quality seems to be higher in the latter (SDG), which focuses on procedures. The former consultative process (at EFSA) is an example of risk communication and one-way communication rather than deliberation. However, input legitimacy in terms of transparency and inclusion is strong in both stakeholder consultations.

Stakeholder participation in risk management

In the food safety domain, there is only one possibility for stakeholders to participate in risk management and to discuss technical issues and legislative proposals, namely the Advisory Group on the Food Chain and Animal and Plant Health (hereafter called 'The Advisory Group'; see the second row of Table 6.1). Although incorporated in a public authority, the Advisory Group is distinctive in the sense that it is based on stakeholder participation and consultation that is transparent, inclusive and formalized. The Advisory Group was formed in 2004 (DG SANCO 2009c) and replaced old committees such as the Advisory Committee on Foodstuffs and the Advisory Committee on Agricultural Product Health and Safety as well as certain standing groups attached to it. Its purpose is to establish a dialogue between the Commission's departments and the 'socio-professional circles' (CD 2004, p. 1) involved in the fields covered by food legislation. The dialogue is said to assure the possibility to 'anticipate and pinpoint the nature of the difficulties and uncertainties which the Union may have to address, with an eye to taking decisions and ensuring that the risks can be clearly explained to the public' (CD 2004, p. 1). Another promise of this group is to ensure that the Commission's proposals are 'technically viable, practically applicable and acceptable by all the players involved' (CD 2004, p. 2).

This Advisory Group on the Food Chain and Animal Health brings together key stakeholders including farmers, the food industry, retailers, consumer organizations and others to advise the European Commission on food safety policy. It meets in principle twice a year in plenary sessions to discuss general policy issues that have an interest for all the 36 member organizations or in Working Groups when more technical issues are examined. The representative bodies must meet the following criteria: (1) that the general nature of the interests are protected, (2) that they represent all or most Member States, and (3) that they have a permanent presence at Community level to allow direct access to members' expertise and to permit swift and coordinated reactions (CD 2004b). If necessary, the Commission may invite additional experts or observers, including representative bodies from non-Member States, to participate in the work of the Advisory Group or its working groups. The purpose of the working groups is both to collect more technical contributions from the different fields involved and to provide information on the implementation of the existing law and rules of procedure. The possibility to expand in terms of scale, scope and participants is an example of the inclusive nature of the process. Nevertheless, critics are not satisfied with representativeness due to structural inequalities (cf. Greenpeace, Brussels, May 2009). Despite improvements, consumer interests remain a minority and there are great disparities between participants in terms of access to resources. In particular, the asymmetry in access and production of information is a key issue that may lead to stakeholder inequality. Stakeholder consultation in the Advisory Group is based on an integrated approach to the food chain. Representatives from the different components of the food chain are included in this forum. This is a clear difference compared to the earlier Advisory Committee in which, for instance, food and feed were treated individually. There are two important differences between these groups that are related to procedural aspects of deliberation. First, the regulation 178/2002 states that consultation shall be open and transparent which means for example, that the minutes of the Advisory Group are now published on the webpage. This differs from the former secrecy of the meetings. Secondly, this forum represents an established procedure for stakeholder participation and is a stable forum for stakeholders to

deliberate. There are some limitations to the process because while the consultation may be ongoing, the Commission is not obliged to use input from the consultation or the Advisory Group. Therefore, the potential output legitimacy of this forum, in terms of reduced risks to health or the environment (as perceived by the public), may be questioned. Since the implementation phase of GMO regulations has already taken place, DG SANCO's newfound experimental and participatory approach towards stakeholders has not had any major effect on the governance of GMO.

It may appear as if stakeholders can be consulted on every occasion and on every topic in the EU food safety domain. This is definitely not the case. There are strict limitations on stakeholders participation. They are never authorized to participate directly in risk assessment or risk management. As an example, EFSA keeps the Stakeholder Consultative Platform on an arm's-length distance, and the GMO panel meetings are held behind closed doors. On the risk management side, stakeholders operate (as professional stakeholders and as lobbyists) outside the comitology system. Another important remark is that consensus is not the purpose of any stakeholder consultative process examined in this chapter. EFSA's and DG SANCO's approach to consultation does not follow the conventional view of deliberative decision-making. In contrast, the emphasis is on constructive discussion and elaboration of difference: The motive why DG SANCO consults stakeholders is to gather different opinions and to get different types of feedback on a proposal (cf. Sabel and Zeitlin 2008). However, decision-making is never in the hands of stakeholders. Consultation can never replace the procedures and decisions of legislative bodies. Another important conclusion is that stakeholder consultation always takes place in the initial phase of the policy-making process. A consultation concerns 'hard-law', and occurs in the shadow of hierarchy. In a similar way, GMO governance is based on hard law, rather than soft forms of governance. Neither policy-makers nor the biotech-industry favours self-regulatory measures on GMO. As discussed in Chapter 10, the strong shadow of hierarchy may be explained by the fact that food safety concerns high stakes for the population. In order for consumers to feel safe, there must be hard law (Respondent, Brussels, May, 2009).

Conclusions

This chapter has argued that there has been a deliberative turn in sorts in the EU food safety domain and in the governance of GMO. Yet, in this domain the deliberative elements are not manifested in ways that one could expect them to be, despite the multilevel governance context, highly influenced by the will of Member States and supranational institutions. We have claimed that deliberative interaction takes place within or close to core political institutions and legislative bodies. Thus deliberation is mainly exercised within a hierarchical governance form. In the governance of GMO, as well as in the food safety domain in general, policy-makers use a deliberative logic in relation to certain stakeholders, whereas the public is, per definition, excluded from the concept of ‘stakeholders’. Consequently, we have not been able to find many policy innovations at the interface between the Commission/DG SANCO and the public. In the beginning of this chapter, we identified specific problems of the authorization process of GMO that can be conceived as problems relating to input as well as output legitimacy. Two conclusions can be made from this analysis. Firstly, we have demonstrated the close interplay between input (or procedural) legitimacy and effectiveness. The ‘Deadlock in the Council’, EFSA’s pro-GMO bias, a de-politicized Commission and other problem areas have resulted in a complete breakdown of normal EU decision-making processes. Since several actors (among them EU Member States) do not approve of the authorization process, institutional, policy and compliance effectiveness are hampered (cf. Chapter 3). Secondly, important reforms have been made such as new guidelines for risk assessment and a more pluralized conception of risk. Nevertheless, this has taken place on a high ministerial level and outside of the realm of stakeholder consultation.

The second part of this chapter turned the attention to stakeholder consultations as a new mode of governance. Four different stakeholder consultations, all parts of the EU food safety domain, were presented. Clearly, civil servants at EFSA and at DG SANCO are eager to experiment with, and to implement, participatory processes for stakeholders. As mentioned earlier, stakeholder consultations are used in the initial phase of the policy-making process

surrounding food safety. Yet, the form is clearly hierarchical. Or put reversely, DG SANCO and EFSA represent a so-called 'old mode of governance', although their hierarchical forms are influenced by a deliberative rationality. Yet the Habermasian position on deliberative democracy discussed in Chapter 2 has little or no relevance in this particular policy domain. When stakeholders are consulted, the purpose is not to transform their preferences in the light of the better argument (Pellizzoni 2001, p.66). Instead, the purpose is to bring together diverse voices, so that policy-makers can make informed choices when drafting a piece of legislation.

As we have indicated, stakeholder consultations in the food safety domain are typically strong with respect to transparency and inclusion. Interesting to note, respondents are satisfied with the organizational set-up, even though the effectiveness and problem-solving capacity of these processes are unclear. The stakeholders have problems explaining the output of consultation, yet they appreciate the possibility to meet and exchange information. Not all respondents, but most of them, perceive the stakeholder consultations as acceptable and legitimate. Another important conclusion is that the deliberative quality differs among the various stakeholder consultations examined in this chapter. Our analysis suggests that the closer stakeholders come to the scientific core, the less stakeholder deliberation. In the DG SANCO Stakeholder Dialogue Group (SDG), stakeholders deliberate on procedural issues with no particular relevance for food safety or GMO. At the Advisory Group on the Food Chain and Animal Health, stakeholders may (depending on the topic) deliberate, not only with other stakeholders and civil servants, but also with experts and invited guests. At EFSA's Consultative Stakeholder Platform, on the other hand, the communication comes down to risk communication, not deliberation. Altogether, our analysis suggests a deliberative turn in the EU food safety domain and in GMO governance. However, the deliberative quality seems to be higher in low-stake issues (cf. stakeholder consultations and GMO authorization procedures). In addition, stakeholder consultations are stronger in terms of input legitimacy (inclusion and transparency) than output legitimacy (effectiveness). As to the actual impact that stakeholders have on policy proposals, this remains to be examined in future research.

References

- Alemanno, Alberto (2006), 'Food Safety and the Single European Market', in: Christopher Ansell and David Vogel. (eds.), *What's the beef? The contested governance of European food safety*, Cambridge: the MIT Press, pp. 237-258
- Ansell, Christopher and David Vogel (eds) (2006), *What's the beef? The contested governance of European food safety*. Cambridge: the MIT Press.
- Bartlett, David (1999), 'Mad cows and democratic governance: BSE and the construction of a 'free market' in the UK'. *Crime, Law & Social Change*, **30** (2), 237-257.
- Bureau van Dijk Ingénieurs Conseils with Arcadia International EEIG (2005), Brussels, 5 December 2005, available at:
<http://www.efsa.europa.eu/cs/BlobServer/Non_Scientific_Document/final_report_evaluation1.pdf?ssbinary=true>
- Bergeaud-Blackler, Florence & Maria Paola Ferretti (2006), 'More politics, stronger consumers? A new division of responsibility for food in the European Union', *Appetite*, **47** (2), 134-142.
- Borrás, Susana (2006), 'Legitimate governance of risk at the EU level? The case of genetically modified organisms', *Technological Forecasting & Social Change*, **73** (1), 61-75.
- Blok, Anders (2007), 'Experts on public trial: on democratizing expertise through a Danish consensus conference', *Public Understanding of Science*, **16** (163), 163-182.
- Buonanno, Laurie (2006), 'The Creation of the European Food Safety Authority', in: Christopher Ansell and David Vogel. (red.), *What's the beef? The contested governance of European food safety*, Cambridge: the MIT Press, pp. 259-278
- Caduff, L. and T. Bernauer (2006) 'Managing Risk and Regulation in European Food Safety Governance', *Review of Policy Research*, **32(1)**, 153-168.
- Commission Decision (2004a). Concerning the creation of an advisory group on the food chain and animal and plant health. (2004/613/EC).

Commission Decision (2004b). The Advisory Group on the Food Chain and Animal and Plant Health, rules of procedure, <http://ec.europa.eu/food/committees/advisory/rules_procedure_en.pdf>

Council Conclusion on Genetically Modified Organisms (GMOs), 2912th ENVIRONMENT Council meeting Brussels, 4 December 2008, available at <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/envir/104509.pdf>

Directive 2001/18 of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220, [2001] OJ106/1.

DG SANCO (2009), 'Future Challenges Paper: 2009-2014', available at: <http://ec.europa.eu/dgs/health_consumer/events/future_challenges_paper.pdf>

DG SANCO (2009b) 'Stakeholder Dialogue Group', available at: <http://ec.europa.eu/dgs/health_consumer/sdg/index_en.htm>, Accessed: February 17, 2009.

DG SANCO (2009c), 'Advisory Group on the Food Chain and Animal and Plant Health' Available at: <http://ec.europa.eu/food/committees/advisory/index_en.htm>, Accessed March 2009.

DG SANCO (2007) 'Healthy Democracy'. Conclusions and Actions following the DG SANCO 2006 Peer Review Group on Stakeholder Involvement, available at: <http://ec.europa.eu/health/ph_overview/health_forum/docs/ev_20070601_rd08_en.pdf>

Eckersley, Robyn (2004), *The Green State*, Cambridge, MA: The MIT Press.

EFSA (2007), Press Release 28 June 2007. EFSA reaffirms its risk assessment of genetically modified maize MON 863, available at: <http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1178621165358.htm>

EurActiv.com, March 2006, <<http://www.euractiv.com/en/food/austria-criticises-efsa-gmo-bias/article-153305>>, Accessed: November 2008.

European Commission (2004), 'Communication from the Commission concerning the creation of an advisory group on the food chain and animal and plant health and the establishment of a

consultation procedure on the food chain and animal and plant health through representative European bodies', COM (2004), 6 August 2004, Brussels, available at: <
http://ec.europa.eu/food/committees/advisory/sanco_01678-01-00_en.pdf>.

European Commission (2001), *European Governance: A White Paper*, Com (2001) 428 final, 25 July 2001, Brussels.

European Commission (2000), *White Paper on Food safety*, COM (99) 719 final, 12 January 2000, Brussels.

Ferretti, Maria Paola (2008), 'Participatory strategies in the regulation of GMO products in the EU', in Jens Steffek, Claudia Kissling and Patrizia Nanz (eds). *Civil society participation in international and European governance: A cure for its democratic deficit?* Basingtoke: Palgrave Macmillan, pp.166-184

Gutmann, Amy and Dennis Thompson (2004), *Why Deliberative Democracy?* Princeton and Oxford: Princeton University Press.

Hiltrud Breyer, MEP, Greens, April 2007, <<http://www.hiltrud-breyer.eu/hbreyer/fe/pub/en/dct/424>>, Accessed: April 2009.

Irwin, Alan. (2006), 'The Politics of Talk: Coming to Terms with the "New" Scientific Governance', *Social Studies of Science*, **36** (2), 299-320

Irwin, Alan (2001), 'Constructing the scientific citizen: science and democracy in the biosciences', *Public Understanding of Science*, **10** (1), 1-18.

Klüver, Lars (1995), 'Consensus conferences at the Danish Board of Technology', in Simon Joss and John Duran (eds), *Public Participation in Science – The Role of Consensus Conferences in Europe*, London: Science Museum London, pp. 41-52.

Knowles, Tim, Richard Moody, Morven G. McEachern (2007), 'European food scares and their impact on EU food policy', *British Food Journal*, **109** (1), 43-67.

- Kupier, A. Harry (2009), 'The role of scientific experts in risk regulation of foods', in: Michele Everson and Ellen Vos (eds.), *Uncertain Risk Regulated*, Oxon: Routledge-Cavendish, pp. 389-398.
- Lang, Tim (2003), 'Food Industrialization and Food Power: Implications for Food Governance. Development', *Policy Review*, **21** (5-6), 555-568.
- Nielsen, Porsberg, Annika, Jesper Lassen and Peter Sandøe (2007), 'Democracy at its best? The consensus conference in a cross-national perspective', *Journal of Agricultural and Environmental Ethics*, **20** (1), 13-35.
- Oels, Angela (2006), 'Evaluating Stakeholder Dialogues', in: Susanne Stoll-Kleemann and Martin Welp, *Stakeholder Dialogues in Natural Resources Management. Theory and Practice*. Springer, pp.118-150
- Pellizzoni, Luigi (2001), 'The myth of the best argument: power, deliberation and reason', *British Journal of Sociology*, **52** (1), 59-86.
- Renn, Ortwin, Thomas Webler, Horst Rakel, Peter Dienel and Branden Johnson (1993), 'Public participation in decision-making: a three-step procedure', *Policy Sciences*, **26**, 189-214.
- Regulation 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, [2003] *OJ* L268/1.
- Roosen, Jutta, Jayson L. Lusk and John A. Fox (2003), 'Consumer demand for and attitudes toward alternative beef labelling strategies in France, Germany and the UK', *Agribusiness*, **19** (1), 77-90.
- Sabel, Charles F. and Jonathan Zeitlin (2008), 'Learning from Difference: The New Architecture of Experimentalist Governance in the EU', *European Law Journal*, **14**(3), 271-327.
- Séralini, Gilles-Eric, Dominique Cellier and Joël Spiroux de Vendomois (2007), 'New analysis of a rat feeding study with a genetically modified maize reveals signs of hepatorenal toxicity'. *Archives of Environmental Contamination and Toxicology* **52**, 596-602.

- Shaffer, C. Gregory and Pollack, A. Mark (2009). 'The EU regulatory system for GMO', in Michelle Everson and Ellen Vos (eds), *Uncertain Risk Regulated*, Oxon: Routledge-Cavendish, pp. 269-294.
- Skogstad, Grace (2006), 'Regulating Food Safety Risks in the European Union: A Comparative Perspective', in: Christopher Ansell and David Vogel (eds), *What's the beef? The contested governance of European food safety*, Cambridge: MIT Press, pp. p. 213-236
- Skogstad, Grace. (2003) 'Legitimacy and/or policy effectiveness? Networked governance and GMO regulation in the European Union', *Journal of European Public Policy* **10** (3), 321-38.
- Stoll-Kleemann, Susanne and Martin Welp (2006), 'Linking Case Studies to the Integrative Theory of Reflexive Dialogues', in: Susanne Stoll-Kleemann Martin Welp, (eds), *Stakeholder Dialogues in Natural Resources Management. Theory and Practice*, Berlin-Heidelberg: Springer, pp. 348-371
- Ugland, Trygve and Frode Veggeland (2006), 'Experiments in Food Safety Policy Integration in the European Union', *Journal of Common Market Studies* **44**(3), 607-624.
- Von Winterfeldt, Detlof (1992), 'Expert knowledge and public values in risk management: the role of decision analysis', in Sheldon Krimsky and Dominic Golding (eds), *Social theories of risk*, London: Praeger Publishers, pp. 321-342
- Vos, Ellen. (2009), 'The EU regulatory system on food safety: between trust and safety, in: Michelle Everson and Ellen Vos (eds), *Uncertain Risk Regulated*, Oxon: Routledge-Cavendish, pp. 249-268.
- Vos, Ellen. (2004), *Overcoming the Crisis of Confidence: Risk Regulation in an Enlarged European Union*, Universitet Maastricht: Unigraphic.
- Vos, Ellen. (2000), 'EU Food Safety Regulation in the aftermath of the BSE crisis', *Journal of Consumer Policy* **23** (3), 227-55.
- Wynne, Brian (2008-12-10). Presentation at the seminar: 'Genetics, Normality and Democracy'. Lund university.