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Whose Expert Are You? Independence of EU Expert Bodies and Scientific Advisors in Light of the Dieselgate Scandal and the Glyphosate Saga²

Abstract:

The Dieselgate scandal and the glyphosate saga have led to the EU-level concentration of risk assessment competencies and the reconsideration of institutional and functional independence of the new or rearranged EU-level risk assessors. This process also relates to national-level expert bodies, yet the national autonomy, technically and formally, still prevails regarding organisational issues. Even if the sector-specific characteristics remained relevant in road transport and food safety areas, the potential for cross-sectoral learning procedures could be identified clearly between some EU agencies and other expert bodies (in-house bodies vs agencies). Notably, the transparency of different types of risk assessor bodies is pivotal in open communication and raising public awareness of the severe risks associated with the EU's Single Market regulation.

Tags: expert bodies, glyphosate saga, Dieselgate, independence, EU Agencies, JRC

Legislative references cited:

Treaty on the Functioning of the European Union

Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in food safety matters, OJ L31, 1.2.2002.

Regulation (EC) No. 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, OJ L309, 24.11.2009.

Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC, OJ L151, 14.6.2018.

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Independence of scientific decision-making as a significant cross-sectoral concern?

Recent scandals, notably the glyphosate saga and the Dieselgate scandal have brought to the forefront the independence concerns of the European Union's (EU) scientific decision-making in the last decade. The EU-level reauthorisation (risk assessment) of glyphosate led to public outcry from several policy stakeholders of chemical and food safety areas in 2017/2023 due to its probably carcinogenic nature, identified by the United Nations sector-specific IARC body in 2017. The 2015 Dieselgate, especially the relatively moderate post-scandal reforms, has been heavily criticised by stakeholders and NGOs in the transport and environmental sphere. These ongoing issues have underscored the clear need for the EU Single Market's strengthened (own) scientific capacity and expert bodies' policy choices to have far-reaching and severe implications. In the current era of constant economic, environmental, and societal challenges, the need for solid science is not just a necessity but a lifeline. This paper mainly focuses on two relatively diverse policy areas and their market deficiencies. It also highlights the Single Market's current evolution, in which both the independence and the scientific capacity of the EU scientific advisors and expert bodies came into the limelight, often relying too much on Member States' vis-à-vis further market participants' scientific capacity.

This paper starts with the theoretical examination of EU expert bodies and their status in the EU institutional landscape. The theoretical considerations of these special types of bodies will be followed by a brief history of the Dieselgate and glyphosate saga as market failures of recent times. The central part of this article refers to the institutional and functional independence features of the two examined policy areas in light of their evolution due to the crisis management steps described before. Finally, the paper evaluates the cross-sectoral elements of expert bodies' independence patterns and considers future challenges.

Due to both areas' highly complex technical nature, the paper follows a mixed research methodology based on evaluating policy papers and scientific publications. From the empirical research angle, this has been combined with semi-structured interviews and a 12-element questionnaire to get a more comprehensive view of the ongoing reauthorisation debates of the glyphosate saga.

The EU's Expert Bodies and Scientific Advisors and their Independence Regimes

The Evolution of the EU's Expert Bodies and Scientific Advisors as Risk Assessors

Complex technical issues like active substances such as glyphosate or the emissions of engines need to be assessed thoroughly while also considering the potential risk factors associated with these products entering the EU's Single Market. The institutional set-up of the Single Market, emphasising the single entry and mutual recognition clause of the ECJ case law (Cassis case law), also led to the restructuring of authorisation competencies between EC/EU-level and national levels.³ This process inevitably resulted in the more centralised EU-level competencies of assessing product risks. The effectiveness of this restructuring process, however, is highly dependent on ensuring the independence of the risk assessor, not just from the applicant (manufacturer) side necessarily having interests in the swift authorisation and re-authorisation of its products, but also from certain Member States having a more substantial market share in these sectors.

Our paper also follows this risk assessment vs. risk management dichotomy, mainly emphasising the EU's risk assessor expert bodies and scientific advisors. In this system, the *risk*

³ László Szegedi: Az európai közigazgatás fejlődése és szabályozása. Dialóg Campus, Budapest, 2018a. 42.

assessment is a scientific process that requires the identification and characterisation of a hazard, the assessment of exposure to the danger and the characterisation of the risk⁴ (assessment of the magnitude of the risk by experts and expert bodies),⁵ while *risk management* as a technically later stage of scientific decision-making by policy-makers to determine the acceptable risk level for the society based on the outcome of the assessment.^{6 7}

From an institutional point of view, the EU-level capacity of scientific expertise has been initially built up concerning the Commission, which could guarantee the administrative support and background for the functioning of such bodies (*in-house expert bodies*), including the most relevant one, the *Joint Research Centre* (JRC).

Due to the Diselgate, the JRC has conducted vehicle conformity checks as one of the main post-scandal reform steps. Yet, it has already been established under the Euratom Treaty as the leading actor of the Commission's in-house scientific capacity. Much of its work relates to several other policy areas. The JRC operates as a separate Directorate-General (DG) with priorities set by the Commission President while having its own resources and strategic work plan.⁸

As a further and probably most relevant form of EU risk assessor expert bodies, *EU (decentralised) agencies* have been created many times as a response to (scientific) crises originating from inadequate risk assessment (and crisis management) at the national level combined with the lack of such capacities at the EU level.

These agencies are non-Treaty bodies as they still lack the sector-neutral primary legal basis⁹ for their creation and functioning.¹⁰ Therefore, the scholars also laid down their definition by formulating their main characteristics: relative independence, non-terminated mandate, own legal personality, and creation by Union law for specific purposes (competencies). Due to their 'non-Treaty' status, some common rules on their establishment and functioning in the form of the soft law Joint Statement and Common Approach of the European Parliament, the Council and the European Commission on decentralised agencies (Common Approach) have been enacted in 2012. However, the Court of Justice of the EU (CJEU) kept the delegation model of powers to the agencies dated back to the 1950s case-law called Meroni doctrine in its recent judgment¹¹ primarily based on the restricted delegation due to the 'non-Treaty' nature of such bodies. This reshaped Meroni doctrine (also known as Meroni 2.0) in its new judgment (ESMA – C-270/12) partly recognises the recently increased role of agencies, however still treating them as 'supporters' of the EU's policy-making, denying the prerogative of making own policy choices without the involvement of further EU/national counterparties. Regarding the scientific side and decision-making, the agencies' position has been reinterpreted in light of the ESMA judgment. This judgment concluded that any task conferred upon the Commission that cannot

⁴ Stern, Paul C. – Fineberg, Harvey V. (1996): *Understanding Risk. Informing Decisions in a Democratic Society*. Washington, D.C.: The National Academies Press.

⁵ T-13/99, *Pfizer Animal Health v Council*, para 156.

⁶ Guéguen, Daniel – Marissen, Vicky: *Science-Based and Evidence-Based Policy-Making in the European Union: Coexisting or Conflicting Concepts?* Bruges Political Research Papers, 2022/88, 9.

⁷ Morvillo, Marta: *Glyphosate Effect: Has the Glyphosate Controversy Affected the EU's Regulatory Epistemology?* European Journal of Risk Regulation, 2020/3., 427–430.

⁸ Guéguen–Marissen 2022, 14.

⁹ EEA has sector-specific primary legal basis in form of Art. 192 TFEU (EC-Treaty Art. 175). Art. 100(2) TFEU (EC-Treaty Art. 80(2)) applies in case of EMSA and of EASA and Art 91(1) TFEU in case of EUAR.

¹⁰ Art. 263.1 TFEU guarantees the judicial review against agencies' acts for third parties before the Court of Justice of the European Union. Art. 228 TFEU also made it possible to submit a complaint against the agency's act to the European Ombudsman, while Art. 15 TFEU guarantees the access to documents and general transparency requirements in relation to agencies' activities.

¹¹ C-270/12, *United Kingdom v Parliament and Council* (ESMA), paras. 46-50 and 67.

be carried out due to the lack of technical expertise could be left to EU agencies, stressing the agencies' primary role to function as bodies of technical expertise.¹²

The agencification era with a shift of implementation as well as scientific (risk assessment) competencies of EU policies towards relatively independent EU agencies¹³ was different and, in terms of independence, can be seen as being separated from the Commission's often too bureaucratic, politicised, and generalist functioning.¹⁴ The agencification reached its most intensive period in the 2000s as new EU agencies were established (or 'upgraded') with substantial capacities in scientific decision-making (European Food Safety Authority – EFSA in 2002; European Chemicals Agency – ECHA in 2007; European Medicines Agency – renamed as EMA in 2004). In this regard, the creation of EFSA as a significant actor in the glyphosate saga has been part of the crisis-driven agencification after the scientific mishandling of the BSE crisis of the 1990s. Yet, the process is far from being over, as the new crisis cycle also led to the creation of new decentralised agencies, such as the already mentioned European Securities and Markets Authority – ESMA in 2010 or the newest one – called the Anti-Money Laundering Authority starting to operate from 2025.¹⁵

Several other forms of expert bodies within the current institutional set-up of the EU are not relevant in light of the Dieselgate or glyphosate saga, yet they need to be mentioned. The list of Commission expert groups and similar entities is much broader¹⁶ today. From this list, the *Chief Scientific Advisors*, as particular risk assessors, should be pointed out, as they are appointed in their personal capacity, with the requirement of acting independently and in the public interest (selected by an independent identification committee assisting the Commission in selection) to support the Commission by providing scientific advice on various topics.¹⁷ Together with a secretariat in the Commission's research and innovation department, the advisors and Scientific Advice for Policy by European Academies are collectively known as the *Scientific Advice Mechanism* (SAM).

The *comitology committees* could also be categorised as bodies of technical expertise. However, using the dichotomy system of assessment vs. management, these committees are risk managers who determine the policy choices on acceptable risks. They consist of one representative per Member State, technically acting as specialist bodies when the Commission has been granted implementing powers in the text of a law. Regarding independence, their daily functioning depends on the Commission, which prepares the draft version of implementing acts to be submitted to these committees for their opinion, has the comitology committee meetings on Commission premises several times a year, and provides secretarial support for these actors. As an illustrative example, the glyphosate-related PAFF (standing committee on Plants, Animals, Food and Feed with national representatives) committee can be mentioned to act as a risk

¹² Everson, Michelle – Vos, Ellen: EU Agencies and the Politicized Administration. In Pollak, Johannes – Slominski, Peter (eds.): *The Role of EU Agencies in the Eurozone and Migration Crisis*. Palgrave Macmillan, Cham, 2021, 35.

¹³ Kaeding, Michael – Versluis, Esther: EU Agencies as Solution to Pan-European Implementation Problems. In Everson, Michelle – Monda, Cosimo – Vos, Ellen (eds.): *European Agencies in between Institutions and Member States*. Wolters Kluwer International, Amsterdam, 2014, 73–87.

¹⁴ Keleman, Robert D.: *The Politics of 'Eurocratic' Structure and the New European Agencies*. West European Politics, 2002/4., 112.; Everson–Vos 2021, 26.

¹⁵ Laszlo Szegedi – Balint Teleki: 10 Years of the European Banking Union, 20 Years of Hungarian EU Membership – Not Yet Single Application of the Single Rulebook of the Banking Union in Resolution Decisions, *Hungarian Yearbook of International and European Law*, Nomos Verlag, 2024. (due to be published).

¹⁶ European Commission: Register of Commission Expert Groups and Other Entities, 2023: <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups-explained?lang=en>

¹⁷ European Commission: *How the Group of Chief Scientific Advisors Works*. Luxembourg: Publications Office of the European Union. 2021: <https://doi.org/10.2777/490362>; Guéguen–Marissen 2022, 1.

manager in deciding on the final authorisation and re-authorisation of glyphosate.¹⁸ Further expert forums can also be mentioned, not necessarily having an objective fact-finding scientific mandate but working as a dispute resolution forum (like the new Implementation Forum of automobile policy area) or other expert body types.

Several forms of EU expert bodies evolved during the integration with less independent (Commission-related) ‘in-house’ bodies like JRC, SAM, or other bodies and later with the more independent institutional form of EU agencies. Yet, such bodies’ independence and ‘scientific performance’ also rely on the policy framework, which has often been shaped and reshaped by the EU’s institutional evolution.

The EU’s Expert Bodies and Scientific Advisors’ Independence as Risk Assessors

As a general requirement, independence has no universal definition in the EU law. Yet, primary and secondary legislation of the EU refers to independence based on special aspects, considering this requirement many times.¹⁹ The Treaties of the EU have been mentioned about several EU institutions, such as the European Commission, the Court of Justice of the EU, and the European Central Bank²⁰ or the EU Charter of Fundamental Rights about the right to good administration²¹ (impartiality). Using the general terms of scholars, the independence of a public body ‘can be defined as a status which ensures that a body concerned can act completely freely without taking any instructions or being put under pressure.’²²

Regarding the independence of risk assessors, these bodies can also be categorised based on their *institutional* (organisational, budgetary, staffing, and financial side) and *functional* (being shielded from external actors influencing the entity’s activities in performing their tasks) *independence*.²³ The risk assessor’s institutional independence can highly depend on its status within the EU’s institutional landscape. This refers to the in-house body status of the abovementioned bodies and the ‘inbetweeners’ status of EU decentralised agencies. Namely, the more independent agencies, also called ‘inbetweeners’, have their potential inside a triangle consisting of EU institutions, national authorities and market participants.²⁴ Functional independence and threats to it can also vary due to various influences.

Institutional independence of in-house expert bodies *vis-à-vis* EU agencies is different due to their relationship with the Commission as the main actor of the EU Executive. The Commission and single commissioners have a decisive role in the case of the in-house expert bodies, yet do not function as centralised ministerial administration concerning agencies. The EU agencies referred to certain DGs as ‘partners’ in their reports.²⁵ Yet, the Commission could substantially

¹⁸ European Commission: Comitology. 2023: https://commission.europa.eu/law/law-making-process/adopting-eu-law/implementing-and-delegated-acts/comitology_en#how-do-committees-work

¹⁹ Vos, Ellen – Volpato, Annalisa – Bellenghi, Guido: Independence and Transparency Policies of the European Food Safety Authority (EFSA) – Study Requested by the European Parliament ENVI Committee. 2023, [Independence and transparency policies of the European Food Safety Authority \(EFSA\) \(europa.eu\)](https://efsa.europa.eu/en/efsa-activities/studies/independence-and-transparency-policies-of-the-european-food-safety-authority), 13.

²⁰ Art. 130 TFEU

²¹ Art. 41 EU Charter of Fundamental Rights refers to every persons’ right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

²² Vos, Ellen – Athanassiadou, Natassa – Dohmen, Laura: EU Agencies and Conflicts of Interests – Study Requested by the European Parliament Petitions Committee, 2020, 14.

²³ Vos – Volpato – Bellenghi 2023, 14.; Vos – Athanassiadou – Dohmen 2020, 14.

²⁴ Michelle Everson – Cosimo Monda – Ellen Vos: European Agencies in between Institutions and Member States, in: Michelle Everson – Cosimo Monda – Ellen Vos (Eds.): European Agencies in between Institutions and Member States, Wolters Kluwer International BV, The Netherlands, 2014, 4.

²⁵ Morten Egeberg – Jarle Trondal – Nina Vestlund M.: The quest for order: unravelling the relationship between European Commission and European Union agencies, Journal of European Public Policy, 2014/5., 620-24.

impact the risk assessor's work (even on more independent agencies) by influencing its staffing policy by initiating the related budget proposals.

The further dilemma in the case of risk assessors occurs related to their *internal structure* and *decision-making*. The management of in-house bodies refers to the preferences of the Commission (JRC's direct appointment). As the main decision-making body, the independence of management boards of agencies differs within the abovementioned triangle, also reflected by the boards' composition. These primarily consist of the representatives of Member States, with further involvement of representatives of the Commission, the European Parliament, and the stakeholders.²⁶ Even if the national representatives have various integrity requirements related to their tasks based on the Treaties, the EU Staff Regulation and the related requirements of sector-specific laws to prioritise EU interest, in practice, the national interests might overrule that of the Union (double hattedness). As a result, the lowest common denominator solutions would be easier to agree upon, preventing effective representation of EU interests in Union acts.²⁷ Therefore, some EU agencies have followed modified internal structures and decision-making procedures.²⁸ The 2019 post-crisis changes of the General Food Law Reform due to the glyphosate saga are clear examples.

As for the *functional independence* of in-house expert bodies vis-à-vis EU agencies, it implies even a broader range of requirements. In this paper, the risk assessors' performance in acting regardless of external influences depends on the policy-specific environment, namely having resources and being impartial in their assessment. On the level of the individual scientific personnel, these requirements are connected to the abovementioned double hattedness concerns in a case- or product-specific way, focusing on scientific personnel's impartiality and conflict of interest policies. This influence could also be relevant from a double angle, as the EU personnel selection (especially in the case of highly qualified experts) relies on national candidates and, often, on former employees of manufacturers (revolving door).²⁹ Referring specifically to agencies, some scholars already pointed out a decade ago that the independence and impartiality of the scientific internal bodies are core elements instead of representatives' related concerns, which internal bodies modifications have already been enacted to the Common Approach.³⁰ On the level of the risk assessor body, the functional side refers to policy-specific issues like the share of competencies and EU-level and the risk assessor's laboratory capacities, enabling in-house bodies and EU agencies to assess (or reassess) the risk profile of products regardless of the Member States or manufacturers' laboratory results.

The Risk Assessors' Independence Concerns in Light of Dieselgate and Glyphosate Saga

The Dieselgate and the Glyphosate Saga as the Single Market's Recent Failures

Following the abovementioned approach of a single point of market entry and mutual recognition, the EC/EU built up a harmonised framework for approving motor vehicles. This includes their common registration, sale and entry into service within the Single Market. According to Directive 2007/46, the car manufacturer is primarily responsible for the (national)

²⁶ Common Approach Point 10.

²⁷ Ellen Vos: European Agencies and the Composite EU Executive, in: Michelle Everson – Cosimo Monda – Ellen Vos (Eds.): European Agencies in between Institutions and Member States, Wolters Kluwer International BV, The Netherlands, 2014, 26.

²⁸ Regulation 178/2002 Art. 25., which has been changed due to the GFL Reform.

²⁹ Adriaan Schout – Fabian Pereyra: The institutionalization of EU agencies: agencies as 'mini commissions', Public Administration, 2011/2., 418-432.

³⁰ Common Approach Point 20.

approval process at the national regulatory authority, including all aspects of the approval process and ensuring production conformity. Several further provisions have been added to this directive with technical details, such as the Commission's emission requirements. The shortcomings of this harmonised regulatory system, combined with the deficiencies of the enforcement side, were revealed during the so-called Dieselgate of 2015.³¹

A small group of graduate students from the U.S. West Virginia University, supported by an NGO (the International Council for Clean Transportation – ICCT), began investigating “clean diesel” introduced to the U.S. market by conducting real-world driving tests on various European car models. They revealed that the software of several diesel engine models could detect defeat devices when the models were being tested under laboratory circumstances and accordingly adjust the car's emissions to minimum requirements, which has been noticed by the United States Environmental Protection Agency (US EPA) and the California Air Resources Board (CARB) for the European partners.³²

As a result, the European Parliament established a special committee, which issued an Inquiry Report (EP Dieselgate Report) in 2017.³³ The primary deficiencies identified by this report included the failures in testing procedures, systemic severe concerns about the EU's type approval and in-service conformity provisions. Regarding the subject of independence in the report, the Member States relied heavily on the tests performed in the car manufacturers' certified laboratories under the supervision of technical services. This also included consultancy services for car manufacturers to obtain type approval. There was an apparent conflict of interest due to an additional financial link, while the national authorities were only kept responsible for validating the procedure at the end.³⁴ Yet, the related EU reform steps remained relatively weak.³⁵ As a result, no new EU road transport agency has been established, surprisingly, especially in light of the EU agencies based in other transport areas.³⁶ At the same time, some competencies of the Commission and national authorities have been strengthened with a new testing procedure and further requirements.³⁷

Glyphosate has been the crucial active ingredient of the market-leading herbicides and plant protection materials since the 1970s.³⁸ Its carcinogenic effects have been centred on scientific (and public) debates based on theoretical contradictions and regulatory deficiencies.³⁹ In many ways, the case of glyphosate, compared to that of Dieselgate, is not about fraudulent practice but more centred around the core issues of scientific decision-making, capacities, and data

³¹ Marco Frigessi di Rattalma – Gabriella Perotti: European Union Law. In Frigessi di Rattalma, Marco (ed.): *The Dieselgate. A Legal Perspective*. Springer, Cham, 2017, 179–217.; Edin Mujic – Donald Klingner: “Dieselgate:” How Different Approaches to Decentralization, the Role of NGOs, Tort Law and the Regulatory Process Affected Comparative U.S. and European Union Outcomes in the Biggest Scandal in Automotive History. *International Journal of Public Administration*, 2020/7, 611–620.

³² Luc Bovens: *The Ethics of Dieselgate*. *Midwest Studies in Philosophy*, 2016/1, 262.

³³ European Parliament - EP: Report on the Inquiry into Emission Measurements in the Automotive Sector. 2016/2215(INI). 2017: https://www.europarl.europa.eu/doceo/document/A-8-2017-0049_EN.html

³⁴ Ibid. 12.

³⁵ Tristan Skupniewicz: The vehicle type approval framework regulation (2018/858): A post-Dieselgate paradigm shift for EU vehicle regulations or a missed opportunity?, *Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne*, 2020/34., 51–61.

³⁶ László Szegedi: The Crisis Management of the ‘Dieselgate’ – Transboundary (and) Crisis Driven Evolution of EU Executive Governance with or without Agencies? *Európai Tükör*, 2018/1b (Ksz.), 92–100.; Skupniewicz 2020, 55.

³⁷ European Court of Auditors – ECA 2019.

³⁸ Jose V. Tarazona – Daniele Court-Marques – Manuela Tiramani – Hermine Reich – Rudolf Pfeil – Frederique Istace – Federica Crivellente: *Glyphosate Toxicity and Carcinogenicity: A Review of the Scientific Basis of the European Union Assessment and Its Differences with IARC*. *Archives of Toxicology*, 2017/8, 2723.

³⁹ Both NGO policy expert interviews (Gergely Simon interview on 14 May 2024, Angeliki Lysimachou on 16 May 2024) pointed out the EFSA's glyphosate-realited risk assessment carcinogenicity and cause-effect relationship concerns, while excluding alternative scientific case study sources.

analysis and testing. It also refers to the share of competencies between the national vs. EU level and between risk assessment and management.

According to the recent EU rules, namely Regulation 178/2002 (General Food Law – GFL) and Regulation 1107/2009 (Plant Protection Products Regulation – PPP Regulation),⁴⁰ risk assessment (and management) competencies are being divided based on the subject of the authorisation. The EFSA, as an EU agency, is the main actor of the authorisation process as a risk assessor of active substances (like glyphosate) supported by a competent scientific authority of Rapporteur Member State (RMS), while the risk management decisions on active substances are to be taken by the Commission assisted by the PAFF (standing committee on Plants, Animals, Food and Feed with national representatives) comitology committee.⁴¹

The EU has authorised and reauthorised glyphosate on the Single Market several times. The re-authorisation process in 2017 has been highly disputed, with an ongoing Citizens Initiative campaign and the EP's resolution to consider the total phase-out of glyphosate from the Single Market.⁴² The scientific debate on the key characteristics of glyphosate is still ongoing,⁴³ while the re-authorisation process in 2023 led to EFSA's conclusions identifying "no critical areas of concern"⁴⁴ about glyphosate.⁴⁵ At the same time, some Member States already follow diverse approaches in dissenting to the authorisation of glyphosate, challenging the EU's and the Single Market's general approach.⁴⁶

The Pre-Crisis Institutional Independence Concerns in Automobile and Food Safety Industries

From an *institutional* point of view, Dieselgate has proven to be a clear example of market segmentation, even if the EU legislator meant to create a harmonised framework for automobile registration, sale, and entry into service. As identified by the EP Dieselgate Report, on the side of the Member States, there was no consistent application of EU law as regards exemptions on defeat devices. Moreover, they were still looking for the defeat devices installed in the VW vehicles, particularly those Member States whose authorities type-approved them.⁴⁷ Twenty-eight national type-approval authorities had diverse technical expertise and human and financial resources to obtain vehicle-type approval. At the same time, there was neither specific EU oversight over national authorities nor uniform interpretation.⁴⁸ The report concluded that the Commission should have taken a more prominent coordinating role to ensure the uniform application of the EU legislation on type approval while requesting more information from the

⁴⁰ Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L31, 1.2.2002 (hereinafter referred to as General Food Law - GFL); Regulation (EC) No. 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, OJ L309, 24.11.2009. (hereinafter referred to as PPP Regulation).

⁴¹ Articles 7–13 PPP Regulation (Morvillo 2020, 426).

⁴² Giulia Claudia Leonelli: The Glyphosate Saga and the Fading Democratic Legitimacy of European Union Risk Regulation. *Maastricht Journal of European and Comparative Law*, 2018/5., 598–599.

⁴³ Imaan Rana – Patton K. Nguyen – Gabrielle Rigutto – Allen Louie – Jane Lee – Martyn T. Smith – Luoping Zhang: Mapping the Key Characteristics of Carcinogens for Glyphosate and Its Formulations: A Systematic Review. *Chemosphere*, 2023/339, 1–20.

⁴⁴ Both NGO policy expert interviews (Gergely Simon interview on 14 May 2024, Angeliki Lysimachou on 16 May 2024) identified clear criticism towards EFSA's own criteria setting in this regard.

⁴⁵ European Food Safety Authority – EFSA (2023): Glyphosate: No Critical Areas of Concern; Data Gaps Identified. Online: <https://www.efsa.europa.eu/en/news/glyphosate-no-critical-areas-concern-data-gaps-identified>

⁴⁶ Leonelli 2023, 200–224.

⁴⁷ EP 2017, 9.

⁴⁸ Ibid. 11–12.

Member States on how they dealt with those vehicles in the existing fleet that do not comply with the legal emission limits under real driving conditions.⁴⁹

The Dieselgate problem seemed to be a ‘nobody’s baby’ constellation lost between the diverse functioning national authorities and the Commission. Yet, an *EU-level expert body*, even if not specifically responsible for this policy area, signalled the market failures of Dieselgate in due time, as the 2013 JRC report already mentioned the possible use of defeat devices, while JRC started its on-road testing cycles within its laboratory capacities as soon as 2007.⁵⁰ The 2016 SAM report also showed these measurement discrepancies.⁵¹ (The European Environmental Agency’s 2016 report later revealed the shortcomings of diesel cars’ default devices.⁵²) The *Commission* did not undertake further technical research, request additional information from the Member States, or ask the Member States’ authorities to undertake further measures.⁵³ Therefore, the institutional independence concerns of Dieselgate are characterised not just by the ‘nobody’s baby’ problem but by the lack of proper communication between EU-level actors and the lack of ‘in-house’ expert bodies’ having their voice for raising public awareness.

As the EP and JRC Reports revealed, the Dieselgate-related expert bodies have also proven to have serious institutional independence deficiencies. Certain Member States prevented the qualified majority vote within the Real Driving Emissions – Light Duty Vehicles (RDE-LDV) working group (created in 2011), delaying the introduction of a more ambitious Commission proposal for conformity factors in case of emission limits.⁵⁴ There was an apparent conflict of interest in the representation of the RDE-LDV working group, which consisted mainly of experts from car manufacturers (and other automotive industries), without ensuring a balanced picture of the policy area.⁵⁵ This kind of working group supported by the Commission, yet having a broader circle of representatives (even if it cannot be categorised in the risk assessment vs management dichotomy), seriously influenced the technical requirements of automobile emissions in the 2010s.

From an *institutional independence* perspective, the food safety area showed a somewhat simplified ‘institutional landscape’ as the EFSA as the main risk assessor (yet ECHA is responsible for chemical issues) had already been created in 2002 due to the scientific mishandling of the BSE crisis of the 1990s. In its pre-glyphosate era, the EFSA Management Board (responsible for appointing the EFSA Executive Director) already had a smaller management board of 14 members appointed by the Council in consultation with the European Parliament from a list drawn up by the Commission, from whom four members shall have their background in organisations representing consumers and other interests in the food chain.⁵⁶ As main bodies of scientific decision-making, the Scientific Committee (general coordination necessary to ensure the consistency of the scientific opinion procedure) and permanent Scientific Panels are responsible for providing the scientific opinions of the Authority, each

⁴⁹ Ibid. 12.

⁵⁰ Martin Weiss – Pierre Bonnel – Rudolf Hummel – Urbano Manfredi – Rinaldo Colombo – Gaston Lanappe – Le Philippe Lijour – Mirco Sculati: *Analyzing On-Road Emissions of Light-Duty Vehicles with Portable Emission Measurement Systems*. JRC Scientific and Technical Reports. Luxembourg: Publications Office of the European Union, 2011, 31.

⁵¹ Scientific Advice Mechanism – SAM: *Closing the Gap between Light-Duty Vehicle Real-World CO₂ Emissions and Laboratory Testing*. Scientific Opinion 1/2016. Online: https://research-and-innovation.ec.europa.eu/knowledge-publications-tools-and-data/publications/all-publications/closing-gap-between-light-duty-vehicle-real-world-co2-emissions-and-laboratory-testing_en, 27.

⁵² Jean-Paul Skeete: *Examining the role of policy design and policy interaction in EU automotive emissions performance gaps*, Energy Policy, 2017/6, 379.

⁵³ EP 2017, 14.

⁵⁴ European Parliament – EP 2017: 6–7; The JRC Report has proposed the finalisation of new test procedure until December 2013 (JRC Report, 2).

⁵⁵ EP 2017, 8.

⁵⁶ Art. 25. GFL.

within their spheres of competence.⁵⁷ As for their composition, the committee consists of chairs of panels and six independent scientific experts, just like the experts complying with the EFSA's independence policies.⁵⁸ The EFSA's work as an expert body and agency is technically based on the opinions produced within the Committee and panels, even without laboratory capacities. The EFSA's institutional independence is laid down in the GFL Regulation's provisions, along with the budgetary process and staffing policy. At the same time, it also functions as a core member of the food safety (rapid alert and emergencies) network system with other Member States.⁵⁹ Yet, the glyphosate saga and the related GFL Reform have proven that there was clear room for improvement regarding EFSA's independence requirements.

EFSA itself is also reliant on the Member States' authorities – yet, to a lesser extent compared to the competencies of the automobile industry's type approval process. As mentioned, the competencies differ based on the subject of the authorisation (active substances vs. products). Products containing that active substance shall be authorised at the national level and examined by RMS based on a zonal system.⁶⁰ This zonal system is combined with mutual recognition when, technically, Member States recognise a pre-existing authorisation granted by another national authority if an applicant has requested this.⁶¹

Focusing briefly on the risk management represented by the PAFF committee, it is noteworthy that it has proven more resistant as a risk manager. The Commission's proposal on the renewal of glyphosate was enacted in 2017 after two-year-long multi-cycle amendments.

These highly mixed competencies lead to concerns similar to those identified in Dieselgate, namely that certain risks remain unnoticed. CJEU's Blaise judgment also reveals this deficiency.⁶² The 2018 SAM Report was meant to introduce an integrated process for substance and product risk assessment (a collaboration of EU-level risk assessors) and management (Commission or Member States).⁶³ The EP's related report also noted that national authorities lack the institutional and technical-scientific expertise and further resources to act appropriately⁶⁴ - while the diverse capacities of national authorities could also be seen as a concern, which has only been partially addressed by the zonal system.

Even the pre-crisis institutional independence patterns have shown some common patterns between the two investigated policy areas. Both areas had EU-level risk assessors even before the crisis reforms. However, the automobile industry's policy area had the Commission's (less independent) in-house expert bodies seemingly capable of identifying the crisis causes with their testing in due time, yet with less real impact (*vis-à-vis* their voice to be heard) on the communication landscape. Even if the EFSA can be seen as a more independent risk assessor with a Management board of diverse representation and internal scientific bodies, it is without its own testing/laboratory capacities. Additionally, both policy areas had to rely on the Member States' involvement – even if to a different form and extent as one of the main characteristics of EU composite administration.

⁵⁷ Art. 28. GFL.

⁵⁸ Art. 28. GFL.; Vos – Volpato – Bellenghi 2023, 14.

⁵⁹ Chapter IV. GFL.

⁶⁰ Art. 43 PPP Regulation.

⁶¹ Articles 40–41 PPP Regulation.

⁶² C-616/17, Blaise (Leonelli 2023, 221).

⁶³ Scientific Advice Mechanism – SAM 2018, 31–33.

⁶⁴ European Parliament – EP (2018): Report on the Union's Authorisation Procedure for Pesticides. 2018/2135 (INI). Online: https://www.europarl.europa.eu/doceo/document/A-8-2018-0475_EN.html, 7–26.

The Pre-Crisis Functional Independence Concerns – Mainly Relying on Manufacturers' Data?

The Dieselgate has demonstrated that the EU's regulatory system of the automobile industry and type-approval had serious functional independence concerns. As concluded by the EP Dieselgate Report, the Member States relied heavily on the emission tests performed in the car manufacturers' certified laboratories under the supervision of technical services (which also included consultancy services to car manufacturers on obtaining type approval). As a result, this constellation was much more serious than some revolving door concerns identified. There was an apparent conflict of interest due to an additional financial link, while the national authorities were only kept responsible for validating the procedure at the end.⁶⁵ Manufacturers potentially addressed the national authority with the least stringent interpretation of the rules and the lowest fees.⁶⁶ This kind of forum shopping could become even more debated as the diverse organisational set-ups of national authorities necessarily differ in the Member States – just like diverse independence and conflict of interests (internal) policies.⁶⁷

In the case of glyphosate and the EFSA, the PPP Regulations follow the data ownership paradigm, relying on the applicant's choice of which data is to be presented in its dossier (potentially excluding unfavourable research results by the applicant) combined with the lack of EFSA's laboratory capacities.⁶⁸ This high-level reliance on the applicant side and the utmost importance of sound and proper scientific decision-making led to a detailed internal policy on conflict of interests. The main requirements are embedded in the EFSA's 2017 Policy on Independence and the 2018 Decision on Competing Interest Management, while other internal documents further detail these requirements. Most of these EFSA-specific internal documents have been renewed due to the glyphosate saga and the 2021 entry into force of the new Transparency Regulation.^{69 70}

Like in the automobile industry, similar concerns apply to the functional independence of national authorities acting in their capacity as RMS. In 2012, the renewal of the authorisation was allocated to the German authority (Federal Institute for Risk Assessment – BfR) as RMS to submit its draft report to the EFSA, which adopted its final opinion in 2015 and reiterated the RMS's position on the *non-carcinogenic* nature of the glyphosate. This conclusion was later combined with a collective RMS assessment of five Member States, which might have added value due to peer pressure, not to mention that the German Bayern bought the manufacturer of related products, Monsanto. Moreover, the applicant's free choice of the RMS for the first approval request resulted in the apparent asymmetry that only 11 Member States have been involved as rapporteurs, and in 80% of applications, only four of them.⁷¹

Even before the crisis management steps of the two policy areas, the functional independence rules were determined by the individual risk assessors' internal requirements. This could be more identifiable in the case of the EFSA as a single assessor of the food safety policy area. The automobile industry's related regulations and requirements remained diverse due to the

⁶⁵ Ibid. 12.

⁶⁶ Ibid. 11.

⁶⁷ European Court of Auditors – ECA 2019, 30.

⁶⁸ Art. 8 PPP Regulation (Morvillo 2020, 428).

⁶⁹ Vos – Volpato – Bellenghi 2023, 14.

⁷⁰ Both NGO policy expert interviews (Gergely Simon interview on 14 May 2024, Angeliki Lysimachou on 16 May 2024) referred to still present transparency concerns regardless of the new Regulation, while EFSA 2022-2023 annual reports pointed out already increased capacities to deal with incoming requests due to Transparency Regulation.

⁷¹ Morvillo 2020, 429.

national-centred allocation of the associated competencies, which partly also applies to the RMS and zonal system of food safety regulation.

The Post-Crisis Institutional Independence Reforms – Centralization towards EU-level?

From an *institutional perspective* of the automobile industry's risk assessment, the EU legislators have taken clear crisis-management steps regarding competencies allocation and better coordination between the Member States with the new or strengthened EU-level actors. However, the post-crisis reforms left the allocation of related competencies relatively Member States-centred, which could contribute to the independence heterogeneity on the national level and further independence issues on the EU level. As the European Court of Auditors noted after the crisis, only a few Member States (Spain, the Netherlands) have separated the market surveillance and type approval authorities and functions – even if NGOs have demanded clear steps towards more independent environmental authorities.⁷²

The Implementation Forum, even if not an actual risk assessor, addressed the diverse interpretation and forum shopping concerns identified by the EP Dieselgate Report. The Forum, without a real assessment mandate, has been created with representatives of national authorities and a wider circle of interested parties (economic operators, safety, and environmental stakeholders) to facilitate uniform interpretation and implementation. Within its advisory capacity, the Forum may issue (with consensus or simple majority as a second option) soft law opinions and recommendations.⁷³ In terms of institutional independence, the Forum functions within the 'realm' of the Commission (competent DG), providing technical, secretarial support and infrastructure for its functioning,⁷⁴ while its membership instead reflects the intergovernmental dynamics of decision-making given by the representatives of each Member State, yet peer pressure could also be present.⁷⁵ A recent ECA report shows that the Commission used the Forum as a substitute for networking with national counterparties instead of ensuring uniform application of CO2 framework rules and carrying out required assessments.⁷⁶

No new EU road transport agency was created after the Dieselgate, even if the railway, maritime, and air traffic subsectors already had this kind of (more independent) EU-level actor with relatively stronger inspection competencies over national authorities.⁷⁷ At the same time, the influence of an even more integrated higher-level actor in the form of the U.S. EPA (or just the CARB) was demonstrated at the beginning of Dieselgate.⁷⁸

In the new institutional setup, market surveillance is a shared responsibility, with national authorities conducting separate surveillance from type approval sources and the JRC VELA (Vehicle Emissions Laboratories) playing a pivotal role. Established in 2019 as the Commission's in-house expert body with laboratory and testing capacities, the JRC VELA is a cornerstone of the new institutional setup. It is dedicated to the new type of laboratory and on-road vehicle testing. Additionally, JRC's compliance verifications: 80% of the testing capacity

⁷² European Court of Auditors – ECA 2019, 30.

⁷³ Art. 11 Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC, OJ L151, 14.6.2018.

⁷⁴ Rules of Procedure of the Forum for Exchange of Information and Enforcement

⁷⁵ Szegedi 2018b, 85–100.

⁷⁶ European Court of Auditors - ECA: Reducing carbon dioxide emissions from passenger cars - Finally picking up pace, but challenges on the road ahead, Special Report, 2024/1, [Special report 01/2024: Reducing carbon dioxide emissions from passenger cars | European Court of Auditors \(europa.eu\)](#), 19.

⁷⁷ Szegedi 2018b.

⁷⁸ Ibid.

is for a proactive selection of vehicles (based on risk assessment gathered in the new Forum), while the remaining 20% was based on a reactive (suspicious cars, vehicles with new technologies, etc.) approach.⁷⁹ Therefore, the work of the two new bodies and the new institutional set-up has created inter-reliant national and EU-level actors. Even if the JRC VELA's data has not been used to provide feedback on the correctness of cars' CO2 reported values, it undermines the overall efficiency of the expert body's input - regardless of their status of independence.⁸⁰

As for *institutional independence* of the food safety area, the GFL Reform has led to changes envisaged by the 2018 SAM Report through an integrated risk assessment process.⁸¹ The Member States' level (especially considering the RMSs) of independence heterogeneity prevails in light of national autonomy. Yet, the GFL Reform had a clear impact on the institutional independence and capacities of the EFSA.⁸² Its management board has been rearranged with the broader involvement of national representatives (as some internal rearrangement of dispute resolution and providing more peer pressure). At the same time, the EP, civil society and food chain organisations appoint further members.⁸³ The Member States might propose membership in the EFSA scientific panels while guaranteeing high-level expertise, independence, and territorial balance.⁸⁴ The broader involvement of national representatives might have addressed, to some extent, the overly mixed system of competence shared between the EU and national levels. However, the special report on EFSA's independence issues stressed that 'double-hattedness' concerns could also prevail, as revealed by a recent expert report.⁸⁵ Specifically, the 2022 French analysis suggested that a common framework on conflicts of interest should apply to members of national authorities involved in preparing EFSA opinions as rapporteur or co-rapporteur.⁸⁶ In a broader sense, this issue refers to a significant dilemma of EU composite administration functioning with the involvement of national authorities/capacities, yet many times in the lack of the same requirements applied to the members of integrated decision-making due to Member States' autonomy concerned.

The Post-Crisis Functional Independence Reforms – Assessors' Own Independence Policies?

Although the new Implementation Forum for automobile policy cannot be labelled as a 'true' risk assessor, functional independence might be highly relevant due to the manufacturers' and national interests. This has been proven in a broader context of automobile emissions by the pre-crisis period's commercial double-hattedness (see RDE-LDV working group manufacturer-centred representation model) or the more recent revolving door issues⁸⁷ (see postponing stricter Euro7 emission rules). The Forum has its own rules of procedure detailing, to some extent, a publicly available conflict of interests (internal) policy. This refers to the Commission

⁷⁹ Pierre Bonnel et al.: European Market Surveillance of Motor Vehicles. JRC Science for Policy Report. 2022: <https://dx.doi.org/10.2760/59856>, 6.

⁸⁰ European Court of Auditors - ECA: Reducing carbon dioxide emissions from passenger cars - Finally picking up pace, but challenges on the road ahead, Special Report, 2024/1, 20.

⁸¹ Scientific Advice Mechanism – SAM 2018, 31–33.

⁸² EFSA interview (EFSA chief legal officer on 4 July 2024) also referred to highly increased capacities (doubled budget) to deal with new requirements and labelled EFSA as a pioneer of EU expert bodies due to recent years' reforms.

⁸³ Newly rephrased Article 28(5) GFL.

⁸⁴ Newly rephrased Article 28(5a) GFL.

⁸⁵ Vos – Volpato – Bellenghi 2023.

⁸⁶ cnDAspe: Critical Analysis of the EFSA's Rules for Managing Interests, 2022: [Impression \(alerte-sante-environnement-deontologie.fr\)](https://impression.alerte-sante-environnement-deontologie.fr), 2-4.

⁸⁷ Politico: Driving through the revolving door before emissions vote, 2023: [Driving through the revolving door before emissions vote – POLITICO](https://www.politico.eu/article/driving-through-the-revolving-door-before-emissions-vote/)

(competent DG) as the main actor and manager of the Forum's conflicts of interest decision-making (reporting and assessing conflicts; taking adequate measures).⁸⁸

The JRC VELA, as a newly enacted risk assessor, also accepted its rules on 'Independence, Impartiality of Testing, and Inspection Activities. Even if these internal rules are much less detailed than the agencies below, they refer to their accreditation details, the JRC's (general) Integrated Management policy, and the 2015 Scientific Integrity Statement. Explicitly referring to the impartiality of the Inspection Body (JRC VELA), it is also stated that inspection services are only provided to European Commission Directorates. Yet, no private customers can ask for accredited inspections or tests.⁸⁹ In practice, this does not necessarily mean the exclusion of third parties. The JRC VELA's 2020-21 in-service conformity testing also involved a consortium of private laboratories that performed the tests for neither the manufacturers nor the granting type approval authorities as a general requirement.⁹⁰ Moreover, the national authorities' reliance on private contractor laboratories has also obviously been identified in the most recent report on CO₂ testing of vehicles already in circulation, referring to capacity concerns even at the Member States' level.⁹¹ From a broader perspective, national authorities and EU risk assessors should expand their IT capacities and interoperability, as on-board fuel consumption meters and CO₂ reporting obligations will be enacted in the upcoming years.⁹² This change might have great potential for comparing laboratory/assessor emission values with real-world data, revealing the highest average gap for plug-in hybrids (250%).⁹³

The *food safety area's* post-crisis *functional independence* had to be readjusted to new realities of the everchanging scientific knowledge, inevitably impacting the RMS and zonal system.⁹⁴ Interestingly, the CJEU's most recent decisions also added to reassessment, as it has pointed out the right of the national authorities to depart from the scientific findings of RMS – in particular, when it finds additional technical or scientific information not considered by the RMS and indicating the existence of a severe risk.⁹⁵ This 'no good hiding behind others' clause⁹⁶ also refers to the independence of the authorities, not necessarily to involve the other authority in this transnational setting, referring to the many times blurred and complex nature of the EU composite administration.⁹⁷

At the level of the EFSA, the abovementioned 2023 special report evaluated the most recent status of EFSA's independence positively – yet also referred to functional independence deficiencies. EFSA's definition of conflicts of interests does not include 'national interests' or 'political pressure' but is broad enough to include within its scope not only personal interests but also interests deriving from other public duties/roles of the concerned individual. EFSA screens declarations of interest against the mandate of the relevant scientific group and not

⁸⁸ Point 14 of the Rules of Procedure of the Implementation Forum.

⁸⁹ JRC VELA: Independence and Impartiality of Testing and Inspection Activities, 2024, [Vehicle Emissions Laboratories - European Commission \(europa.eu\)](https://ec.europa.eu/vela/)

⁹⁰ Bonell et al. 2022, 23.

⁹¹ ECA 2024, 21.

⁹² Ibid. 31-32.

⁹³ Ibid. 32.

⁹⁴ Questionner's reponses have not identified the food safety area's RMS and zonal system as a clear independence threat, yet one respondent out of three favoured merging of EU assessment competences, while pointing out rather glyphosate saga's other scientific concerns as the major problems.

⁹⁵ C-308/22, PAN Europe v College voor de toelating van gewasbeschermingsmiddelen en biociden, para. 70.

⁹⁶ Luca Knuth: "No Good Hiding Behind Others: Court of Justice strengthens Precautionary Fact-finding Duties under Pesticide Regulation (Case C-308/22, PAN Europe and Joined Cases C-309/22 and 310/22, PAN Europe)", Eu Law Live Analysis, 22 May 2024.

⁹⁷ Daniel Sarmiento: Integrated Decision-Making in the EU and Judicial Review – Can the Puzzle be Fixed?. EU Law Weekend Edition, Special Issue, 2024/188, 1–16.

against EFSA's overall remit – which the EP has also criticised.⁹⁸ What could be relevant concerning the cross-agency learning process is that the EMA and ECHA, as, to some extent, similar scientific-type agencies, have more detailed conflict of interest rules on the financial relationship between academic experts' university employers and their commercial partners. Similarly, the EMA and ECHA have more stringent regulations and less discretion allowed for management board members.⁹⁹

In addition to the move to centralise scientific capacities towards EU-level expert bodies as risk assessors, both policy areas' post-crisis period has strengthened functional independence policies. Yet, rules can inevitably be assessed on how seriously they will be considered. ECA's recent report on CO2 testing revealed positive changes (labelling it 'finally picking up pace') in the EU's post-Dieselgate risk assessment performance; yet, there is room for improvement concerning capacity and transparency/reporting issues.¹⁰⁰ Similar positive results have been shown in the case of EFSA's independence, which still presents potential problems in managing conflicts of interest.

Cross-Sectoral Lessons on Risk Assessors' Independence?

Both scandals and the related crisis management steps impacted the given sector's risk assessors' independence since it has been identified that the integrated scientific decision-making models of the pre-crisis era institutional setup have suffered from significant deficiencies. Yet, the policy areas concerned also had prominent sector-specific characteristics, originating back to the Member States' autonomy on organisational issues of their administrative bodies. At the same time, there was a diverse level of competence concentration even before the Dieselgate and the glyphosate scandals.

The EU legislators have taken some steps in post-scandal reforms of competencies allocation towards better coordination between the Member States with the automotive sector's new Implementation Forum (yet without being a true risk assessor) and JRC's increased powers with the creation of vehicle sector-specific VELA or with the EFSA's revised internal structure. Even if the abovementioned national autonomy still prevails, steps have also been taken by the CJEU in the food safety sector to guarantee the identification of serious risks.

Parallel to the concentration of competencies of EU-level expert bodies, the internal policies on functional independence have also been reviewed or extended, where there is a clear potential for cross-sectoral learning procedures, already identified between agencies, yet could be possible even between different types of expert bodies (in-house bodies vs. agencies).

Functionally, the paper could also identify the decisive role of these bodies in having their own (laboratory) capacities, which can be only interpreted in light of the integrated scientific decision-making models inevitably involving national authorities (expert bodies) with diverse independence patterns. In this way, the independence of EU-level expert bodies can hardly be seen as the characteristic of a single body but rather the overall status of the policy area's actors. Therefore, the centralisation of competencies or more independence has not always proven to be the right (only) way to address the identified concerns.

⁹⁸ Vos – Volpato – Bellenghi 2023.

⁹⁹ Ibid.

¹⁰⁰ ECA 2024, 4-7.

As for the risk assessment based on the expert body's type, we might conclude that the Commission's 'in-house' risk assessors and the more independent agency could perform well. JRC and SAM signalled in due time the systematic concerns later revealed by the Dieselgate scandal. In both cases, a considerable latency period has passed until fundamental reform steps, again showing the relevance of effective communication between the different actors and the general level of transparency – regardless of the type of expert body.

The EU agency cannot be labelled as an 'always-true solution' as formally the more independent risk assessor. Yet, its institutional weight could be substantial compared to an 'in-house' expert body publicly seen as an integral part of 'an overly bureaucratic and politicised' Commission. The creation of (more) independent expert bodies, even as a new EU road transport agency, has been proposed by the EP and other representatives of the automotive industry,¹⁰¹ potentially following a more proactive attitude, having a greater motivation to create some self-profile and this way acting as a sector-specific counterbalance against global market players.¹⁰² They are considering the highly different U.S. administrations, especially the CARB's activity, and the potential of a more independent agency as a policy actor seems proven. Yet, this kind of independence, already evaluated from an institutional, functional perspective, should later be extended to their transparency policy and, by having some self-profile, which could contribute to the risk assessor's credibility.

Regardless of their laboratory capacities and independence, some further lessons need to be learned to exploit the true potential of risk assessor expert bodies. In the era of integrated markets and global supply chains, sound scientific decision-making also relies on interoperability, as both scandals have demonstrated what might occur due to the turbulence between three levels (global market players, regional regulation, and national enforcement). Without a worldwide regulator (or even risk assessor), the EU-level expert bodies might have a pivotal role in ensuring further integration of the EU (Single Market) into global standardisation processes, which might positively impact the EU market players' competitiveness in the future.

¹⁰¹ Frigessi di Rattalma – Perotti 2017, 209.

¹⁰² Szegedi 2018a, 90–100.